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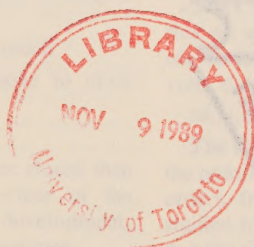
No. S-1

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development
Organization



Second Session, 34th Parliament
Tuesday 24 October 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 24 October 1989

The committee met at 1548 in room 151.

ORGANIZATION

Clerk of the Committee: Are there any nominations for the position of chairman?

Mr Elliot: I move that Yvonne O'Neill be named chair of this committee.

Clerk of the Committee: Are there any other nominations? There being none, I declare nominations closed and Mrs O'Neill duly elected chair of the committee.

The Chair: I thank you very much for your confidence. I consider the work of this committee very significant, as I know each of you does, and I hope that we can do some good and some positive reform for the people of Ontario through this particular committee.

My first duty is to call for the election of a vice-chairman. I would call for nominations.

Mrs Stoner: I nominate Joan Fawcett as vice-chairman of the committee.

The Chair: Are there any other nominations for vice-chair of the standing committee on social development? Mrs Fawcett, are you willing to accept the role of vice-chair?

Mrs Fawcett: Thank you very much.

The Chair: Will someone move to close nominations?

Mr Elliot: I would be glad to.

The Chair: The nominations are closed then and Mrs Fawcett will be vice-chair of the standing committee on social development. Thank you very much for that acceptance.

We now have a new item on the agenda of organizational meetings of the Legislature. The establishment of a subcommittee on committee business is the actual title. You all have the necessary motion on the back of your agenda sheet, so I would ask that someone place that motion with the names and I presume now my name will be part of that motion. We can establish the subcommittee according to the rules of order.

Mr Elliot: I would be glad to move, pursuant to standing order 122, that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and

report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members," and the two names I have are the Chair, Mrs O'Neill, and the Vice-Chair, Mrs Fawcett.

Mrs Cunningham: You do not have any more?

Mr Elliot: There should be one from each of the other two parties.

Mrs Cunningham: I just wondered.

Mr Jackson: The Premier (Mr Peterson) left this before us. I wanted to publicly thank you for that.

The Chair: Perhaps you would like to complete Mr Elliot's motion with whoever will be representing each of the parties.

Mrs Cunningham: I will nominate Mr Jackson, if that is the way it works.

Mr Jackson: I will nominate Mr Allen.

The Chair: The motion is now complete then, that we will have our subcommittee on committee business. I presume there is no need for a vote, that it is a unanimous decision.

Motion agreed to.

The Chair: I have had one request pursuant to the orders, and it certainly has come in under the orders, from Mr Allen, regarding matters to be studied by this subcommittee. Therefore, I feel that the first two conditions have been fulfilled. We have a precise statement, and I can read the statement for your information. The time allotted, as far as I know, has not been determined as yet. Sorry, it is 12 hours. I did not read the last line quickly enough.

There are two other items that will have to be decided regarding this matter, first, the date on which we will be doing the considering and, second, the names of the witnesses. That will require a meeting of the subcommittee. Those two items will be coming forward as soon as possible in the establishment of the subcommittee.

I would like to read the request from Mr Allen so that you will all be apprised of it.

"For the purpose of standing order 123, I request that the subcommittee on committee business meet to consider a report to the committee on the following matter to be designated for consideration by the committee: the phenomenon of expanding food banks in Ontario at a time of general prosperity and the urgency of discovering strategies for transferring back to government the responsibility for feeding the hungry, which food banks took on as a short-term emergency measure early in this decade."

Mr Allen is requesting 12 hours for consideration of this matter. I would suggest humbly that it be the first item on the agenda when the subcommittee meets. Are there any comments or requests? All right, I will do my best to have the subcommittee meet as soon as possible on this matter.

Now, we do have matters referred to the committee by the Legislature. As you know, they take precedence. That is item 4 of our agenda. The way it has come down to us then is, "That the standing committee on social development be authorized to conduct public hearings," and at this moment we have 20 requests to be heard, "concerning the grandfathering under Bill 147 of independent health facilities charging technical fees that were set out in a column denoted by the letter 'T' in regulation 452 of Revised Regulations of Ontario, 1980, made under the Health Insurance Act; that the committee consider the matter for a maximum of four days; and that the public hearings be concluded no later than Wednesday, November 8, 1989."

We do have a time limit that we must abide by, and I would like to suggest that next Monday be the beginning of hearings. If you feel that is too short notice for the witnesses, we could delay it, but it would certainly bring it into a very tight schedule if we are going to write a report. I suggest we begin next Monday, if there are no objections to that. We could have Mr Decker, our clerk, notify the people tomorrow, if that is agreeable.

I do not know whether you would like me to read the names of the people who have requested to appear.

1550

Mr Jackson: Madam Minister—Madam Chair. I do this all the time. I am trying to make you a minister.

The Chair: That is fine, Cam. Keep up the positive thinking.

Mr Jackson: Somebody in the House has to. I am pleased it is me.

Perhaps Todd could get that list photocopied. I briefly had a look at it. While he is having that photocopied, perhaps I could address a couple of concerns I have. I would like to speak to it.

The Chair: Okay.

Mr Jackson: I have two areas of concern. One: Having sat through the hearings, I was concerned that, all through that time, we did not get into the issue of mobile clinics, mobile facilities or mobile services in the health field. Without quoting a member of the ministry staff, I am led to believe that although we did not discuss them during our hearings, they do fall within the ambit of the bill if there are T-fees involved.

Having said that, the example that comes to my mind is mobile magnetic imaging services. So within the context of the mandate before us to have four days of hearings, I would certainly hope that we would allow the list to expand. I was checking the list to see if any of the individuals involved in this health care service are included. My examination of that is that they are not. As such, I would hope that we would structure our time in order to accommodate some additions to that list.

In that vein, I would like to submit it as one group which we have heretofore not heard from. I think it may represent a further oversight in terms of the bill's language. At least the members of the committee should benefit from a further understanding of how mobile clinics operate at arm's length from or part of this bill.

The Chair: Do you have an actual request from somebody, Mr Jackson?

Mr Jackson: Yes. Part of the reason it has not come in is they were unsure as to whether or not they were covered in the bill. Before the day is out, I would be pleased to give the corporate name of the individual and the services that he provides.

My second area, if I may, has to do with a general concern that I have to make sure that our four days of public hearings are as productive as possible and that our understandings of radiology and its related fields are complete. I would hope that we do not limit presentations from, say, a parent group such as the Ontario Medical Association, which has within the radiology field its related disciplines. I think that for us to get a better understanding of nuclear medicine and its relationship to this bill, as opposed to contemporary magnetic imaging, those various groups should be provided the necessary opportunities to present to the committee. I would hope that we would accommodate that request. I consider it valid. Otherwise I am going to have to

spend a lot of time outside of committee to get the understandings which I think all committee members should share. So I am putting that forward as a request. But now that we have the document in front of us, perhaps we can get a sense from our clerk as to what timing is implicit with the current list.

The Chair: The clerk and I were just discussing that it looks like the possibility and/or the desirability of advertising on this particular occasion is not going to present itself easily, simply because four days, when we are meeting only in the afternoons after regular business, is not a lot of time to hear 20 people. You now have introduced at least a 21st person. So I am wondering how you feel about staying with this list with the one addition. Is it one addition you have?

Mr Jackson: My understanding is it would be a total of three additions: the two groups that are not as yet fully represented under the umbrella OMA and the one group that deals specifically as a currently operating mobile radiology unit.

The Chair: So are we in agreement that three could be added to this list? We usually grant half-hour hearings. That is going to mean that we are going to have to be here at 3:30 pm each day just to fit the numbers in that we have on this sheet of paper.

Mr Jackson: I am willing to come at 3:15 pm.

The Chair: If we add three to this, will we be able to accomplish that in four days? If we come at 3:15, we cannot? We would have to work on until 6:15 on a couple of nights?

Clerk of the Committee: Three of the four nights.

The Chair: Three of the four nights we would have to work from 3:15 to 6:15. Who has any comment on that?

Mr Elliot: Are we already framing up a length of time that the people will be in front of us?

The Chair: This committee usually has allowed a 30-minute presentation. If you would like to try to shorten it to 20 minutes, so that we are not quite so cramped, we can certainly discuss that.

Mr Elliot: I think we should talk about that because of the limited number of days that are involved this time. I am aware of a number of other people who want to come before the committee who are not on this list too. I think we should leave it open. I would like to move to a 15- or 20-minute interval of time.

The Chair: How does the rest of the committee feel about Mr Elliot's suggestion of a 15- or 20-minute time frame? Have you any idea, Mr Elliot, how many more people you would want to ask?

Mr Elliot: It could be as many as 10 or a dozen, because they have just been saying: "What's happening? When is it starting?"

The Chair: That really does present problems. Do you have a suggestion, Mr Decker?

Clerk of the Committee: I was just going to point out to the committee that standing order 116(b) provides that the committee, if it gets unanimous consent, could meet until 10:30 on Monday evenings. It can continue to sit. There is that provision. It has never been used before.

The Chair: Nothing like trying it out.

Mr Jackson: You do not get overtime.

Mr Allen: These presentations are not for consideration of the entire bill. They are really essentially for consideration of one amendment that was proposed with respect to the bill which they did not have an opportunity to comment upon earlier. I therefore think that the standing practice of the committee, of half an hour, really would be excessive in this case.

I think the suggestion of 15 minutes or a similar amount of time would be quite appropriate. I would personally find that much more acceptable than a long Monday evening sitting on a subject which is going to get very repetitive, I might say. Hearing 10 or a dozen more is going to be hearing 10 or a dozen more of exactly the same argument that we have heard in the previous 20.

Not particularly wanting to restrain public input, but at the same time, for the purposes of the committee and our reason in hearing people to get a good fix on what the response is to that amendment in this particular constituency, I think 15 minutes would be adequate and we probably ought to leave it at that and stick to our regular hours.

The Chair: Are there any comments on that suggestion?

Mr Jackson: The only difficulty I have, from experience, is that, to take the ultrasound area or other specific items, we need a lot of information so it falls upon the first presenters to do much of our initial education. Although I agree with Mr Allen, we sometimes shorten the time at the front end and we have lots of time for those presenters in the late stages. I would like to differentiate that an individual gets 15 minutes and an association, if it is a province-wide association, gets a

half-hour. I am comfortable with groups that bring an overview from a provincial perspective and those who are individual radiologists who are here to indicate how this will affect their personal practice or their personal patient commitment.

The Chair: Okay. We have had that distinction in the past. Are people comfortable with that?

Mr Henderson: Is a clinic then an individual radiologist or is a clinic considered a group? Because I think a lot of the people coming will be clinics and there may be half a dozen radiologists there.

The Chair: I was thinking the same thing when that was presented.

Mrs Stoner: That is one single location and therefore would be, in my view, considered as an individual presentation as opposed to a province-wide one.

The Chair: There is quite a choice and I think we should make it today. If we go for 15 minutes for everybody, we can hear 40 and we now have 23. Mr Elliot says he may have as many as 10, so 33. We have somewhere between 20 and 40 depending on the time frames we go for.

I1600

Mr Elliot: If there is an umbrella group that the subcommittee recognizes as a group that is representative province-wide, I like Mr Jackson's idea of giving it a half an hour, but if a doctor is coming in representing a hospital, I would treat that, as Mrs Stoner would, as an individual coming in to talk. I can see two or three umbrella groups being treated differently with the half-hour, but if all of them mushroom into being group presentations, rather than the really individual presentations—I think it is counterproductive.

If we could possibly timetable the umbrella groups at the beginning, within the first two days, it might be a good idea too, because that would allow us to reflect on the information they give us for the full week that you have after we hear them.

Mr Jackson: Not only that, you should take that time anyway.

Mr Elliot: Yes.

Mr Jackson: So you might as well schedule it that way.

Mr Allen: Mr Chairman, I think that Mr Jackson has a very good point.

The Chair: I am getting everything today.

Mr Jackson: You are a male cabinet minister now.

Mr Allen: Madam Chair, I think Mr Jackson's point is good with respect to the educational aspect of the early presenters. What I wonder, therefore, is whether we should not ask—for example, those presentations that are most informative, or at least that we are going to need, come from people on our list, like Dr David Greyson, chair of the section on nuclear medicine, the Ontario Medical Association, who obviously would speak for an umbrella organization on a particular issue or particular phase of activity of the clinics involved, which we are going to be hearing from in some repetitive detail.

The Chair: That is what our clerk has just suggested. Actually, I am agreeable to that, if the committee is, that the subcommittee meet immediately after this meeting to determine those groups which are the umbrella groups and that we do have them first. I know Mr Elliot has not yet submitted his names and I am going to ask him if he has any objection to that, that we try to determine next Monday's hearings so that Mr Decker can get the invitations out.

Mr Elliot: Those names should be in the hands of the clerk by tomorrow.

The Chair: I thought then the subcommittee could meet briefly again on Thursday afternoon after routine business to decide the rest of the witnesses we want to hear, if that is okay.

Mr Allen: I really had not quite finished. My point was that there may well be some division of labour around provincial associations. For example, if you have someone from the Ontario association of radiologists, I am not sure that he needs to duplicate the kind of educative function that the chair of the section of radiology, Ontario Medical Association, would perform for us. If we therefore provided those sections of the OMA with a kind of special status at the beginning of the hearings to do the educational work for us, then we might perhaps easily move, for example, a group like the Ontario association of radiologists to 15 minutes to press its special case but it would not be engaged in a kind of educational task that we would need at that point in time because it would already have been done by a major presentation by one of the sections of the OMA.

The Chair: Are you agreeable then, Mr Allen, that we do meet for a few minutes right after this meeting to do at least a preliminary scan?

Mr Allen: Yes.

The Chair: Fine, thank you.

Interjection.

The Chair: Mr Decker is presenting to me the suggestion that perhaps we would want to have ministry input at the very beginning. I wonder how the committee wants to go on that one.

Mr Allen: No problem.

The Chair: Mr MacMillan, would you suggest you would need a half an hour for that kind of presentation?

Dr MacMillan: Yes.

The Chair: That will be done then. There is also the possibility that we do not need to write a report, that we can present our findings, which would, I presume, be a summary and would be done by the research staff of the committee, to the committee of the whole; or we can write a report. We will have to give ourselves some time to do that. We will have to make that decision as well. That could be for the subcommittee's consideration, or are you ready to decide that today?

Mrs Cunningham: With regard to this particular piece of input?

The Chair: Just for this particular item, yes; for Bill 147.

Mrs Cunningham: I would hope that whatever we do we are probably being convinced one way or another around the amendment that was made to the bill. If we are going to be dealing with this piece of legislation in this committee, we will probably have to deal with appropriate other amendments as opposed to a report. That is my thinking.

The Chair: The bill has not been referred. The matter has been referred to us, as you can see from the—

Mrs Cunningham: Right.

The Chair: So the bill will be dealt with in committee of the whole, as I understand it. So I do not think we are dealing with amendments as such.

Mrs Cunningham: Unless they are made in the committee of the whole by individual members. All right.

The Chair: Anything further on this particular item?

Mrs Cunningham: I would just like to go on record as saying that, like my colleagues, I have a number of calls to return and letters to reply to. I will try to encourage people to be part of the presentations that are here, but if I have some strong requests, I will get to the clerk and advise him.

The Chair: Is it fair to ask you to do that by Thursday after routine business?

Mrs Cunningham: Yes, I think it is very fair. They have been sitting on my desk for a bit; I just was not certain how to deal with them. I will try to do that in the next day.

The Chair: That is what we will agree to do at 3:30 pm on Thursday: We will come together as a subcommittee to determine the other witnesses.

Mr Jackson: I believe the select committee on education is having a brief meeting at that time.

The Chair: Are you? The steering committee?

Mr Jackson: Yes.

The Chair: I did not realize that, sorry. So that will not be the right—

Mr Jackson: Will we be very long in our meeting? Do you foresee it as being very long?

The Chair: Here?

Mr Jackson: Yes.

The Chair: We can meet from 3:15 to 3:30. I think it would be long enough if we are just going to determine witnesses. That is really all we are going to do.

Mr Jackson: I understand that the select committee on education is going to be rather lengthy.

The Chair: I would ask Mr Decker to give us a suggested format for the other three days; that he could be as fair as possible.

Mr Jackson: I will get you my names immediately.

Mr Elliot: Just to be clear on the procedure here: Should anybody else who wants to come before the committee contact the clerk?

The Chair: Yes, by noon on Thursday. Is there anything further that you want to discuss regarding the organization of the standing committee on social development at this moment?

What I am left with is a subcommittee meeting following this particular meeting very briefly to go over this original list, a very brief one at 3:15 pm on Thursday to firm up the witnesses on this issue, and a meeting of the subcommittee on committee business to deal with Mr Allen's request.

As you likely know, we are likely going to be given other responsibilities to do with pretty major items of legislation in the next little while. I guess our time is going to be pretty filled and demanding and we will have many witnesses and hearings on some pretty important issues. So I am sure that this committee is going to demand a

great deal of commitment, as it usually has in the past.

I thank you very much, again, for the confidence you have placed in me. I hope I will be very fair and if I am not I expect to be reminded, as some of you have done to me before.

The subcommittee just wants to meet for a moment right here and go over this list. We can at least determine whom we want to meet with next Monday.

The committee adjourned at 1610.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT**Chair:** O'Neill, Yvonne (Ottawa-Rideau L)**Vice-Chair:** Fawcett, Joan M. (Northumberland L)

Allen, Richard (Hamilton West NDP)

Cunningham, Dianne E. (London North PC)

Elliot, R. Walter (Halton North L)

Grandmaitre, Bernard C. (Ottawa East L)

Henderson, D. James (Etobicoke-Humber L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Keyes, Kenneth A. (Kingston and The Islands L)

Stoner, Norah (Durham West L)

Clerk: Decker, Todd**Staff:**

Drummond, Alison, Research Officer, Legislative Research Service

Witness:**From the Ministry of Health:**

MacMillan, Dr Robert M., Executive Director, Health Insurance Division



No. S-2

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development
Independent Health Facilities Act, 1989

Second Session, 34th Parliament
Monday 30 October 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 30 October 1989

The committee met at 1532 in room 151.

INDEPENDENT HEALTH FACILITIES ACT, 1989 (continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chair: I would like to call the standing committee on social development meeting of 30 October to order. We are beginning today a set of hearings and I would read into the record what we are doing the hearings upon:

"That the standing committee on social development be authorized to conduct public hearings concerning the grandfathering under Bill 147 of independent health facilities charging technical fees that were set out in a column denoted by the letter "T" in regulation 452 of Revised Regulations of Ontario 1980, made under the Health Insurance Act; that the committee consider the matter for a maximum of four days; and that the public hearings be concluded no later than Wednesday November 8, 1989."

If our plans come to fruition, that will be accomplished. We will be doing hearings on this item today, tomorrow, next Monday and next Tuesday.

As you can see from the agenda that has been prepared for us by our clerk, the first presentation, which will be until 4 o'clock today, will be an overview by the Ministry of Health. I would ask the representative of the Ministry of Health to begin.

MINISTRY OF HEALTH

Dr MacMillan: I have been asked to give an overview of the act as it relates specifically to the amendment to section 7 made during the last set of committee hearings. This amendment, of course, has added some complexity to a complex bill, and it takes a few minutes to understand the bill and subsequently to understand the amendment.

Ontario does have an excellent health care system of which, for the most part, we can all be proud. We are often looked to as leaders in the provision of various types of care and at making first-class health care available and accessible to all.

The Independent Health Facilities Act is a new component to this system. It is a first for Canada and North America, and we are charting new ground. We will be continuing today a consultation process which will shape the way in which this act is implemented and administered. I have been asked to give you the description of what the amendment will do with respect to this act.

The act was introduced in response to growing concerns about the quality of care in freestanding ambulatory health care facilities. Technological advances have permitted the movement of many medical procedures out of the hospital and into community-based facilities where they can be more easily accessed and more cost-effectively provided. Hospitals have a very extensive quality assurance process and this process has not been moved to the community facilities.

The act also addresses the need for planned development of community services to ensure that our limited health care dollars are most effectively utilized. Ontario's health care system costs now account, as you know, for one third of the provincial budget and are increasing at a rate faster than inflation. We must have systems in place to ensure that the most-needed services are provided in the most cost-effective way possible.

The Independent Health Facilities Act has three very important components: regulated quality assurance, planned development of community-based services and elimination of financial barriers to access community-based services.

This slide indicates that the fees for some of the procedures that are listed in the OHIP schedule of benefits are divided into two components. The professional component, or P fee, is intended to remunerate the physician for supervising the performance of a procedure and for interpreting the results of that procedure. The technical component, or T fee, is intended to cover the equipment, supplies and staff used to carry out the procedure. Of the 4,000 items or so in this regulation, which is known by doctors as the schedule of benefits, most do not have a T component and a P component but rather are a fee for the service wherever rendered, in hospital or in one's office. Where the costs of a particular service are shown to have a fairly high technical component, we have separately listed, in several

ways, a technical component that is paid separately from the professional fee.

The next slide: In effect, the new provision says that if the government removes certain of the technical or T fees from the OHIP schedule, then persons billing these fees before the new act is proclaimed can continue to be funded by the government and can apply for a licence during the first year after the act is proclaimed. During this first year, their applications can be made without waiting for the minister to make a request for proposals. After the first year, these facilities will have to be licensed under the act in order to receive funding from the government for the items covered by the T fees.

The T fees to which the amendment applies are those set out in columns in the OHIP schedule. The sections of the schedule which have T fees in columns are diagnostic radiology, diagnostic ultrasound—most of the codes—nuclear medicine and pulmonary function tests, essentially those four types of diagnostic procedures.

The next slide shows a page from the schedule where the T fees are displayed in a column. You can see from those figures we have calculated that, on average, the professional fee is 30 per cent of the total fee billed, the technical fee being seventy per cent.

The next slide contains T fees for other services, which will not be affected by the way the amendment has been worded. They include electrocardiography, echocardiography, electroencephalography, sleep studies, phonocardiography and audiometry. In other words, the T component is there, but it does not fall under a column and therefore, by virtue of this amendment, is not caught up in the grandfathering and licensure requirement.

This overhead shows a page from the schedule of benefits where the T fees are not in a column. For audiometry, in a line it is called "technical component"; then another line says "professional component."

1540

The next slide reviews quality assurance. It is the ministry's position that facilities providing health care to the public, including those facilities providing diagnostic services, should be regulated to ensure proper standards are maintained to safeguard the quality of the care provided.

In a society where even a bag of potato chips may contain a certificate to demonstrate it was inspected to meet some standard of quality, it would be a gross and unacceptable inconsistency to have services fundamental to the health and

wellbeing of the public being provided in the absence of safeguards to ensure quality of care.

The need for quality assurance for medical services should be governed by consideration of the risks of carrying out the procedure and by the possible consequences of poor-quality results.

When the result of a diagnostic procedure can determine the further course of investigations and/or treatment, the attendant importance of high-quality product and accurate interpretation cannot be stressed enough.

Advances in medical technology increasingly allow for the use of sophisticated diagnostic services to move from the hospital into the community. This movement from a relatively established quality assurance environment, as afforded by the accreditation process with the attendant monitoring, auditing and review processes, into a presently relatively unregulated environment lacking such quality assurance programs is a matter of great concern to the ministry and indeed to many physicians operating community diagnostic facilities.

You will likely hear, through the course of these hearings, that it is better to allow the profession to set the standards of care for these facilities on a voluntary basis. Certainly the profession must be responsible for determining appropriate standards of care, and I think there is general agreement that the College of Physicians and Surgeons of Ontario is the most appropriate body to do this. However, these standards are too important to allow for voluntary compliance and this amendment will provide the legislative authority to require ongoing monitoring of quality of care and measurement against standards in all such facilities and to empower the ministry to fund some of these quality assurance programs.

It is the ministry's position that medical technicians, physicians and other professionals involved in the provision of medical services should be required to meet adequate standards in respect of their training and credentials. From the perspective of the patient, the importance of outcome demands accurate and reliable diagnostic services. This requires that the staff, equipment and supplies and methodologies be subjected to a standard which will promote the achievement of such results and that a review process be in place to ensure that the standards established will continue to be met.

Given the sophistication of diagnostic imaging equipment, the potential harm and attendant risk of X-ray radiation and the use of radioactive nucleotides, the possible risk of bombarding

tissue with sound waves and the depth of knowledge of anatomy, pathology and image interpretation required to formulate meaningful conclusions, it becomes intuitively obvious that quality assurance is a fundamental requirement.

Diagnostic radiology includes services which employ X-ray radiation to produce an image on a film. In producing such film, the patient will be subjected to varying doses of X-ray radiation and varying exposure times dependent on the type of study being done. For some types of examinations, a contrast material may be used to highlight certain structures.

X-rays are utilized in studies of bones, soft tissues, blood vessels, angiography, coronary angiography and bowel.

Concerns relative to diagnostic radiology relate to the radiation, the exposure I have mentioned to radiation levels is already governed by the Healing Arts Radiation Protection Act, about which you will be hearing during these hearings. There is the potential for allergic reaction to contrast media, risks inherent in the introduction of foreign materials to the body. Proper interpretation is of course essential when radiology is used to determine a further treatment course.

Diagnostic ultrasound involves the use of sound waves and the ultrasonic range to produce images on screen which may then be recorded by video-computer or hard-copy films. Ultrasound has the advantage of being a noninvasive diagnostic tool. It is used in fields such as obstetrics and ophthalmology and for studies of organs in the pelvis and abdomen.

The interpretation of ultrasound examination requires a high degree of knowledge and experience. Performing the ultrasound examination requires special skills training and education in its use. Presently the use and interpretation of ultrasound external to the hospital setting in this province is governed by no limitations or requirements whatsoever.

Nuclear medicine employs radioactive nucleotides, such as carbon 14, to provide an image of the distribution of the nucleotide in body tissues. The concentration of the distribution of the nucleotides in certain tissues is used in diagnosis. Knowledge of organ and tissue function tissue is utilized to allow for selective imaging of certain tissues; for example, a thyroid gland, which will selectively take up iodine, is scanned using iodine 131.

Nuclear medicine is among the most sophisticated of all medical specialties and is used for diagnostic tests on the brain, lung, bone,

lymphatic system and abdominal organs. Because of the highly specialized nature of this diagnostic field and the use of radioactive materials in diagnosis, quality assurance is particularly important. Also, the equipment used in this field is extremely expensive and must be distributed and utilized to its fullest; and the Healing Arts Radiation Protection Act, which was originally introduced for radiography, does not extend to much of the activity done under nuclear investigation.

Pulmonary function studies include a number of tests to measure lung function, including such things as lung compliance, airways resistance, diffusion capacity and lung volumes. Pulmonary function tests are used in the diagnosis of lung disease, to assess the degree of impairment of lung function and to guide therapy. As with other diagnostic tests used to determine treatment paths, interpretation of test results is important.

This is one area of diagnostic testing, and I might add that ultrasound is another, where concerns have been raised with respect to the potential for overutilization and the development of conflict of interest due to the potential for physicians to refer patients for diagnostic tests where they may have a financial interest. Many of the clinics I am talking about are in group practices where the issue of self-referral is constantly debated. This is currently under debate in the United States, where Congressman Stark has introduced a bill that would place significant limitations on physicians' practice of self-referral.

The out-of-hospital billings to OHIP are increasing dramatically. Claims for diagnostic services performed out of hospital are submitted both by groups and by physicians through their solo practices. Groups are either billing for a single type of procedure, for example, ultrasound, or they are providing more than one type of diagnostic service, for example, ultrasound and radiology. Groups performing more than one type of procedure are referred to as mixed groups. Approximately 993 physicians in solo practice are billing technical fees, which will be affected by this legislation.

Group registration: Physicians providing diagnostic services on a referral basis, for which the plan is billed for both the technical and professional components, normally are registered as diagnostic service groups. Usually a group consists of up to 16 physicians, but even if there is only one physician providing diagnostic services on a referral basis, then the "group" will contain only one physician. Often physicians

belong to more than one group. In fact, there is one physician who is registered in 23 groups, and there are some physicians who have been submitting through a group as well as through their solo practice.

Because of the ability for physicians to administer in groups, the ability of the health insurance division to gain any meaningful data very easily on incomes earned by radiologists and other people in that diagnostic field is extremely difficult.

Private diagnostic groups: Between fiscal year 1985-86 and fiscal year 1988-89, the number of private diagnostic groups has increased from 517 to 709—11.1 per cent—and payments have increased from \$100.2 million to \$163.5 million, a 17.8 per cent increase. It should be noted that the payments include both the technical fee and the professional fee.

The next slide shows payments by types of private diagnostic group and a breakdown of the type of diagnostic service. Almost one half of all diagnostic payments are for radiology, while mixed groups represent almost one third of payments.

1550

The most dramatic evidence of growth has been the increase of mixed diagnostic groups, groups registered to perform more than one category of diagnostic service. In 1985-86, there were only 109 groups registered. By 1988-89, 263 groups had registered with the health insurance division at an average annual rate of increase of 34.1 per cent. Payments increased as well, from \$20 million in 1985-86 to \$53.8 million in 1988-89, with an annual growth rate of 39.1 per cent.

I must emphasize that it does not take a physician to be a part of that growth rate. Anyone can do it as long as he has physicians who have billing numbers and who will work with his practice. In fact, you will be hearing from some people before this hearing who are nonphysicians and who are concerned, of course, about this legislation.

The ability of OHIP to be a plan partner in this is absolutely zero. We pay bills at OHIP; we are not a partner in the planned growth of such development.

The total number of facilities eligible for grandfathering: A recent snapshot of the health insurance division detailed claims file in March 1989 indicates that there are 819 private groups, both diagnostic and nondiagnostic, submitting diagnostic claims which would be affected by this legislation. This study also indicates that 993

solo practitioners were billing for radiology, ultrasound, nuclear medicine or pulmonary function studies which fall under this amendment of the Independent Health Facilities Act. That makes a total of approximately 1,800 facilities which could be eligible for grandfathering.

In the next slide, it is of interest to note that the estimated number of diagnostic services billed by the solo practitioners is 392,000, with total payments of \$11.5 million.

Total billings by potential grandfathered facilities: Those 1,800 facilities which are potentially eligible for grandfathering are currently submitting claims for approximately 4.3 million procedures and receiving payments of \$186.1 million.

That summarizes my comments. I think in closing I would just say that it should be underlined that there has not been a wealth of experience or information that we have anything to worry about in the quality of community services versus those in hospital. Nevertheless, the check marks and the standards and the quality assessment programs that presently exist within hospitals have not been copied other than to a minor degree in the private sector, where more and more of these sophisticated diagnostic tests are being done.

I think if the minister were here, she would be saying that the three fundamental issues in these facilities that this amendment does address are: first, the ability of the ministry to assure the public that there is a quality assurance program in place in the private sector; second, that the ministry is not now standing by watching as growth rates occur in this area that have no meaningful discretion or decision-making at the local level but simply the desire of one single person or a group of people to set up a service and that this would allow the ministry to become a partner in the plan development, along with the district health councils; and third, she would say that it would provide a planned funding base for such community initiatives where indeed not only some of these developments could occur but possibly even more community provision of services, especially in those areas that presently do not have them.

The Chair: Thank you, Dr MacMillan. We have two people on the committee who would like to ask questions. I am going to ask any questioner this afternoon to be very disciplined because we have a very tight schedule, as anybody looking over this agenda can see. Mr Reville, please.

Mr Reville: I just have a technical question. Would Dr MacMillan make those notes and slides available to us in a printed form?

The Chair: They have been given to the clerk and they are ready for distribution.

Mr Reville: Thank you.

Mr Eves: That was a point similar to one I was going to make. I do not know if the ministry wants to entertain questions on its presentation or not, or whether time permits.

The Chair: Yes, they do. We have about six or seven minutes left, if anybody on the committee would like any of the slides explained further, or any general questions of Dr MacMillan.

Mr Eves: I have just a couple of questions of Dr MacMillan on the presentation that he just presented to the committee. For physicians who are operating radiology clinics in the province right now, are they subject to any sort of peer review by the College of Physicians and Surgeons of Ontario and would they come under the definition of "health facility," as opposed to "independent health facility," those that are operated by physicians, in any event under the auspices of Bill 147?

Dr MacMillan: The chances of them being examined by the college of physicians and surgeons is about the same chance as mine, and that was zero in 16 years. The college has a peer assessment program. However, it is administered to only a very small percentage of the number of people who are out practising and radiologists, as physicians, do not come under any closer scrutiny than any other group of physicians. There is no planned program other than for certain groups that are in a higher-risk category.

The HARP legislation certainly does allow for the voluntary introduction of more programs for quality assessment, but presently the HARP legislation, which you may hear about later, only looks at equipment and staffing and does not make any judgements on the quality of film, really, or the quality of interpretation of that film.

Mr Eves: The second part of my question is, assuming Bill 147 passes in some form, as we are sure it will, would these clinics now operated by physicians not be considered health facilities under that broad definition of the act?

Dr MacMillan: Yes, they would.

Mr Eves: Would they not be subject to the same sort of review as any other health facility like a private doctor's office would be under the legislation?

Dr MacMillan: It would be subject to a level of review and quality assessment deemed appropriate for independent health facilities but would

not be subject to the same type of quality assurance in private doctors' offices, which for the most part would not be rendering services in many cases deemed to be as risky as the procedures that are being carried out in independent health facilities.

One could make an argument about ultrasound and some of the simple pulmonary function tests that those tests were no more risky in carrying out than many other things in a private practitioner's office, but for the nuclear imaging and some radiology tests done with contrast material and injectables, there is certainly a much higher risk than many of the things in an ordinary doctor's office.

Mr Eves: I just have one other short question. Originally, this act, I think by everybody's own admission, was designed to encompass perhaps a dozen or two dozen existing clinics in the province that were going to be grandfathered. Now, by an amendment to subsection 7(7), we see we are going to add literally hundreds to the grandfathering procedure. Is the ministry comfortable with that, to apply a bill that was not originally designed to do what we are now going to do if the subsection 7(7) amendment passes? Could those concerns, and I presume they are very valid concerns about review, etc, perhaps not be accommodated under some other mechanism or piece of legislation?

Dr MacMillan: That is an excellent question. That is one we have asked ourselves inasmuch as we are trying to administer this act.

I think it has to be put into perspective that if a doctor is doing ultrasound, probably the most that would happen is that the doctor would be issued a licence to operate that ultrasound. The college would gradually develop some standards for training in order to be able to interpret ultrasound as well as use the instrument, and we would probably continue, certainly at the outset, to fund fees in the same manners that are funded now through the schedule of benefits under the Health Insurance Act. In other words, the T fee from the schedule of benefits at the outset of this administration would probably be a T fee under the Independent Health Facilities Act. I dare say that might likely go to most of the other diagnostic facilities being funded at the outset, unless someone were to come forward and want some other type of funding under his licence.

1600

As for hospital radiology, I think it is safe to say that hospitals have been very concerned inasmuch as they also have the capability to bill on a fee-for-service basis with the technical

component and the professional component of outpatient radiology. I know it is the minister's position that she will guarantee that the funding base of hospitals will not be jeopardized by this act. Whether or not we choose to modify precisely the way in which they are funded, the bottom line would be that the ultimate hospital funding base is not to be jeopardized by virtue of this legislation.

The Chair: Thank you very much, Dr MacMillan. I think we have stayed within that first time frame. I understand you are going to be staying with us.

The first presenter, Dr Taucer, has informed the clerk that he would like to share his time, however short that time is, with Dr Stronell. This will require a great deal of self-discipline, because I would suggest that we need at least five minutes for questions from the committee on your presentation. You may begin.

FABIANO TAUCER

R. D. STRONELL

Dr Taucer: My name is Fabiano Taucer. I am a nuclear medicine physician and a radiologist from Ottawa. Dr Stronell and I are here in our capacity as independent private radiologists. I will introduce some of our concerns on the recent amendment to Bill 147 and Dr Stronell will delve more deeply into some of the complexities of this issue.

The recent amendment to the Independent Health Facilities Act threatens the existence of privately operated X-ray and imaging clinics throughout the province. This will inevitably limit access to these services. It is therefore not in the best interests of the community which the health care system is designed to serve.

One of the original intentions of the Independent Health Facilities Act was to facilitate provision of various aspects of health care in the community; in a sense, to decentralize some aspects of health care from hospitals into the community. Private X-ray clinics are an example of where this is already functioning and functioning well. These clinics are providing a community-based service while absorbing the upfront costs of equipment purchases. It is ironic, therefore, that this amendment would reverse a trend which the original bill intended to support.

Private clinics provide many important advantages over similar services offered in hospitals. Because most clinics are located in the same building as the referring physician, older and disabled patients are spared the hardships of a

difficult second outing to a hospital. Because of the nature of the work that is done in a busy hospital X-ray department, examinations frequently involve lengthy and uncomfortable waiting periods. Again, it is the elderly and the disabled who will suffer the most. Even for those who are healthy, a visit to the hospital involves the cost of a taxi or a bus or the cost of parking. To many, these are not trivial expenses.

Waiting lists for nonemergency services in hospitals may be several weeks, particularly for such studies as ultrasound or nuclear medicine. An informal survey conducted last week of several Ottawa area hospitals revealed waiting times of two to three weeks for abdominal ultrasounds, pelvic ultrasounds and bone scans. While these problems may not be emergencies, it does not diminish the need for expedient treatment. Consider, if you will, the anxiety of a person waiting to have his ailment diagnosed. Results of studies performed in clinics are frequently provided to the referring physician more rapidly than hospitals are able, again reducing the waiting time and expediting treatment.

A radiologist is a specialist in the same sense as a surgeon or an internist. However, instead of using the clinical skills of a physical examination with hands and stethoscope, our examinations are performed only with technologically sophisticated equipment, such as X-ray machines, computerized axial tomography scanners and ultrasound machines. Without these tools, we cannot practise our specialty.

Virtually every other medical specialty can choose to practise outside of the hospital setting at the individual physician's discretion without requiring a special ministerial licence to do so. This amendment would selectively deny every radiologist what I consider the basic right to hang out his or her shingle and practise diagnostic radiology independently.

On a more personal level, my specialty training in radiology and nuclear medicine took six years. This was after six years of university education and one year of internship. I began practising radiology one and a half years ago at the age of 32. My two partners and I opened a diagnostic imaging clinic nine months ago at a capital cost of \$1.3 million dollars. We employ six highly skilled technologists and two secretary-dictatypists.

We made these commitments based on the rules of the game at that time, with written assurances from Gilbert Sharpe of the Ministry of Health that the ministry had no intention of

including radiology clinics in the Independent Health Facilities Act. I have included a copy of that letter for your information.

Suddenly, without warning or consultation, this amendment threatens the jobs of our employees and places my partners and I in, at best, a financially precarious situation.

In summary, the proposed amendment to Bill 147 threatens the existence of private diagnostic imaging clinics that have been providing a good service to the community for decades. It denies the rights of radiologists to practise their specialty outside of the hospital milieu. It threatens the jobs of hundreds, if not thousands, of skilled employees in these clinics. More important, it would significantly restrict access to health care services by the community, particularly punishing the old, the disabled and the poor.

Disease is an intensely personal situation. When we are sick, and we all are at one time or another, we want the best care for ourselves and our families. The long-term effects of this amendment will significantly limit our ability to obtain that level of care.

In my medical practice, when I run across a difficult situation, I ask myself what I would do if this patient were my mother or my son. I hope that as lawmakers you ask yourselves a similar question, "Is this legislation going to create a health care system that is good enough to look after your children or your grandchildren?"

The Chair: It is nice to see you in person, having only talked to you on the phone. Dr Stronell, would you like to take a few minutes? Your brief looks quite lengthy and I am reminding you that you are now seven minutes into a 15-minute presentation.

Dr Stronell: I will do my best.

The amendment does not help to achieve the original goals of the act. It is redundant, there are economic arguments against it and it may interfere with one of the most important intentions of the act, which was to improve accessibility to health care outside hospitals.

First of all, redundancy: Radiology clinics outside public hospitals are already heavily regulated. No new X-ray facility can begin operation without approval from the radiation protection branch of the Ministry of Health. In addition, all radiology facilities in this province are governed by the regulations contained in the Healing Arts Radiation Protection Act. In fact, radiologists who operate such facilities are already more regulated by such legislation than any of their colleagues.

With regard to the assurance of proper professional quality, the physicians who operate such facilities are all licensed medical practitioners who also hold a specialist certificate of the Royal College of Physicians and Surgeons of Canada. The requirement for such advance training has always helped to ensure the highest quality of professional work. However, in addition to this, Ontario's radiologists are now willingly participating in peer review conducted by the College of Physicians and Surgeons of Ontario in order to ensure continued quality care in their facilities.

Given the degree of government regulation which already applies to the opening and operation of radiology clinics, the professional qualifications required of its physicians and the willingness of Ontario's radiologists to participate in peer review, I fail to see the relevance or need of this amendment. What it intends to do is already done.

The economic argument: In a non-hospital-based radiology clinic, the capital necessary to purchase equipment, carry other necessary leasehold improvements and initial operating funding is all raised through the private sector, most commonly by the radiologist himself or herself. The cost of compensation to the existing 500 or 600 facilities for undepreciated capital expenses, leaseholds, etc., will be considerable. For new facilities, the startup costs, from leasehold improvements and equipment purchases to initial operating capital, running into hundreds of thousands and probably even millions of dollars, will no longer be contributed by the private sector if the amendment passes.

Private venture capital and operating moneys will be replaced by public funds. This will occur in a period when the public purse is already overstrained. Moreover, in many of the existing radiology clinics, where technical revenues have not been sufficient to cover the costs of operation, it has long been the practice of the radiologist owners to subsidize their operations by contributing personal funds and a portion of professional income. I doubt that this practice will continue in these facilities if they are globally funded by the ministry. In short, the amendment will remove large amounts of private sector money which has been routinely contributed in the past and continues to be injected into these clinics.

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With regard to the charging of facility fees, I know of no Ontario radiologist who charges such a fee. I doubt that any radiologist-owned clinic in

this province accepts anything other than the OHIP schedule of benefits fee for services rendered.

The inclusion of non-hospital-based radiology clinics under Bill 147 will also result in an unnecessary additional administrative cost. I have no idea what the ministry has budgeted for staff required to administer this act to 20 facilities, but clearly the inclusion of an additional 600 will probably magnify by a factor of 250 to 300 times the administrative cost which was originally budgeted. A costly expansion of the bureaucracy necessary to carry out the amendment will be needed to pay for regulating facilities which are already regulated, inspecting facilities which are already inspected and assuring the quality of physicians who already willingly participate in peer review. This does not make economic sense.

Accessibility: Most worrisome is the fear by many radiologists that the amendment may hamper or even subvert the original intent of the bill, which is to improve the access of patients to quality medical services. Obviously, the addition of the original 20 facilities in question to those services already offered in hospitals amounts to increased access to that particular type of service. I am not so certain, however, that access to radiology clinics outside hospitals will be increased by the inclusion of these facilities within the act.

The act states that local district health councils will define a need and recommend that a facility be established, and the Ministry of Health and then the Minister of Health will determine whether a new facility licence will be granted. This is relevant for the 15 to 20 facilities currently in operation, for whom the act was originally designed, but not for the nonhospital radiology clinics which will be captured by the amendment. Evidence in support of this position can be found through assessment of referral patterns, licensing procedures and public opinion.

With respect to referral patterns, radiologists do not have patients of their own whom they can self-refer. Other physicians, such as family doctors, internists, surgeons and gynecologists refer their patients to radiologists because of their diagnostic expertise in the interpretation of medical images, whether they be X-rays, ultrasound or nuclear medicine images.

Radiologists have no control over the volume of work that they do. Their workload is dictated by how many doctors refer patients to them. It is most common, therefore, for a radiology clinic to

be located in a building in which other doctors have offices where they see patients. The need for radiological consultation has been defined up until now by the referring doctors. Local district health councils play an important role in the provision of health care, but surely the doctors who refer their patients are best equipped to assess the diagnostic needs of these patients.

Licensing: With regard to the licensing of new facilities, the act provides that the minister will finally select a winning proposal for a new facility based upon merit. Does this mean that the choice of radiologists for any group of referring doctors will be based upon one's ability to produce a better tender than his or her competitors? Surely physicians should be able to refer their patients to a specialist of their own choice rather than one selected for them by the local district health council or the Ministry of Health.

The consultation between radiologist and referring physician happens to be an important step in accurate diagnosis and treatment. It was not the intent of Bill 147 to interfere with this consultative process. The amendment causes an unnecessary interference in a professional relationship.

Although the act implies that there will be new locations and facilities which will obtain licences, experience with other government-licensed groups, such as nursing homes, suggests that this may not be that case. Up to 30 per cent of active treatment beds in some Metropolitan Toronto hospitals have been occupied at times by patients awaiting nursing home admission. The last new nursing home licence was issued over 10 years ago. If the same thing occurs in diagnostic radiology, I fail to understand how accessibility to radiological services outside hospitals will be greater in the future than it is now.

The Chair: Dr Stronell, would you summarize your last two pages, because I do have a questioner?

Dr Stronell: I certainly can.

Mrs Cunningham: If it is for me, I would rather you continue on.

The Chair: Okay, then I guess it is understood there will be no time for questions.

Dr Stronell: My fear that implementation of the amendment will result in serious problems of accessibility is also shared by a large proportion of the public. According to an opinion poll commissioned by the Ontario Hospital Association and published in today's *Globe and Mail*, "almost half the people polled—48 per cent—say they are not confident that they can get quick

access to high-technology procedures—such as CAT scans, cancer treatment or heart surgery—if they need to.”

CAT scanners, as you know, are one of the tools used by radiologists routinely in the diagnosing of a wide variety of conditions. The history of CAT scanning in Ontario is a template for what is being proposed for other radiological procedures by the amendment. There has been control of development of CAT scanners based upon regional needs. These needs have been determined by the local district health councils and the Ministry of Health. There have been no T, or technical, fees for CAT scans, but rather the capital and operating costs have been globally funded by the ministry.

The consequences of this type of approach having been applied to CAT scanning over the past 15 years are as follows. There are no privately operated CAT scanners in Ontario. Patients requiring these services can only obtain them in public hospitals. More alarming is the fact that at a time when CAT scanning elsewhere in the western world is as commonplace as a chest X-ray, there are still active treatment hospitals in urban and rural areas, even in the Metropolitan Toronto area, which do not have a CAT scanner. Inpatients in these hospitals must suffer the discomfort of transportation from a hospital in their own community to a hospital where a CAT scan can be performed. For outpatients the situation is even worse. Waiting lists for these examinations are routinely a matter of weeks and often a matter of several months.

Clearly, in the case of CAT scanning, controlled development based upon bureaucratically assessed regional needs and the replacement of technical fees by global funding have resulted in serious problems of accessibility. No wonder the number of dissatisfied citizens is rapidly increasing.

As you may know, patients who are about to receive treatment in hospital are often investigated as outpatients prior to their admission. This investigation often takes place in radiology clinics outside hospitals. If the procedures offered in these clinics suffer the same fate as CAT scanning, then the accessibility will surely decrease. Patients awaiting heart surgery will wait longer for their chest X-rays, and this will delay their hospital admission even longer. For cancer patients, difficulty in obtaining a diagnostic workup to stage and monitor the progress of their disease will eventually delay their treatment. We must not let this happen.

The Chair: Thank you both very much for your presentation. It was certainly of interest, and there are no questions at this time.

Dr Charles Gervais, please. Is Dr Gervais not present? In that case, I will permit you to come back to the table, if you would like, for about five minutes of questions, and then we will go on to the next. Is Bloor-Bathurst X-Ray and Ultrasound present? Then let's go for five minutes of questioning here.

Mrs Cunningham: I have three questions, and either of you can respond to them. I very much appreciate your input and your thoroughness in your presentations. I would like you to respond to three concerns that were raised by the ministry today and given to us, I think, as the reason for the support of this change.

One, the quality assurance: Will this bill, in your opinion and in the work you do, give citizens the kind of confidence in the work that you do to a greater extent, because of the bill, or is that a fair criticism or purpose? I am going to give you all three so that you can choose which ones you want.

With regard to growth rates and input from the local level, I understand what you said about CAT scanning, the whole thing, but you can understand that we have been told that, at least in the view of the ministry, there is some concern that these clinics are growing more rapidly than it wants. You can respond in any way you like.

The third one is this planned funding base. Is it possible to plan a funding base, and do you plan a funding base around the operation of your own clinics? Will this bill help you or hinder you or help the public or hinder the public? Those were the three reasons we were told that the minister wants support for the amendment, and I just want you to respond to those three issues in any way you like.

Dr Taucer: With regard to quality assurance, I would just like to speak as a nuclear medicine physician for a moment. This was not mentioned in the ministry brief, but nuclear medicine is already heavily regulated, as is radiology. The quality assurance is regulated by both the Department of National Health and Welfare and the Atomic Energy Control Board. These regulations ensure that patients receive the proper dose of radionuclide; they ensure that the equipment that is being used to calibrate and to measure the dose of radionuclide is working, and they also overview the operation of the nuclear medicine department to ensure the safety of members of the public who may be in the vicinity and to

ensure the safety of the workers within the clinic, and also the patients, of course.

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I feel that the amount of regulation in nuclear medicine certainly is sufficient and I think that any more would simply be redundant.

The Chair: Did you want to talk to any of the other points that Mrs Cunningham has brought forward for a couple more minutes?

Dr Taucer: I will let Dr Stronell—

Dr Stronell: If I could address the points in the same manner in which you brought them up, the issue of quality assurance is certainly a motherhood issue. It is a motherhood issue for doctors just as much as it is for legislators. You will hear in briefs to be presented by the Ontario association of radiologists as well as the Ontario Medical Association that the last thing Ontario's radiologists want to do is to interfere with any mechanism by which quality can be maintained or improved. In fact, and I will leave it up to them to show you, they have already got a scheme for a proposal for implementation of such a quality assurance without having to resort to legislation.

With regard to the proliferation of diagnostic facilities throughout the province, I wish to remind the committee that even if you were to stop radiology facilities from carrying on these investigations tomorrow, it would not alter the flood of patients or the need for patients to be examined, because the need for examination is not determined by the radiologist. The need for the examination is determined by other doctors, whether they be family doctors or specialists. They decide who needs an imaging test and they send the patient to the facility which can provide that test. If Ontario's private facilities all shut down tomorrow, those same patients will need to be investigated, except they will then be investigated in hospitals which are already overcrowded.

With respect to the funding base, which you brought up before, I have always been a believer in the fact that the private sector can more efficiently manage its business than the public sector with respect to initial implementation, startup costs, marketing surveys, assessments of need, etc. I doubt very much that in facilities that are globally funded once a year there will be the same kind of flexibility that exists in the privately run operations as they exist today. If for some reason or another a new machine or an adaptation of a new machine, an additional piece of equipment or an additional staff person is felt to improve the level of care which is provided at any

of the private facilities today, then the private facility owner can instantly—if he can get the credit from the bank, which we sometimes have trouble getting—but we can more quickly adapt to changing situations in the environment in which the care is being provided.

So in answer to your question, I firmly believe that the funding base as it exists now—that is, with a lot of private sector money—is a much more sensible route to go in both the provision of care and the overall cost than a publicly funded base.

The Chair: Thank you, Dr Stronell. Mr Joshi, would you please come forward? Mr Joshi, representing Bloor-Bathurst X-Ray and Ultrasound, please begin.

BLOOR-BATHURST X-RAY AND ULTRASOUND

Mr Joshi: I am Pramod Joshi, a qualified and registered X-ray technologist. I am a family man and also a Canadian citizen. I have been an X-ray technologist for 20 years and I have worked both in hospitals and in a private clinic.

Presently, I am employed in a private clinic, since the last 15 years. During this long period, I have gained a lot of knowledge about the operation of the X-ray clinic in terms of the patients' care, administration, equipment, supervision and other aspects of running an X-ray clinic. Being an employee in the private sector, I feel that my viewpoint regarding this bill should also be noted.

The X-ray clinic where I work is located inside a medical building, and I feel it is typical of the type of facility which will be affected by this bill. We have a total of eight employees, four full-time and four part-time. We process referrals from approximately 30 to 40 doctors, both in the building and in the immediate vicinity. I feel that we play a very important role in the delivery of quality health care to the people of Ontario at a reasonable cost.

I have heard the charges that we are responsible for the 20 per cent increase of the cost of diagnostic imaging in this province. I totally reject this charge and ask you to consider the fact that all patients are referred to this clinic. We do not manufacture these patients. They are real people with real concerns. If we do not see them, where will they go?

I also heard it said that this legislation is necessary to bring clinics such as these under greater control. But how much more control do you need? All diagnostic X-ray clinics at present have to abide by the HARP regulations for

quality control in which all X-ray equipment has to be tested every six months and a permanent record kept of these tests.

In addition, there is an ongoing peer review program which was pioneered by the Ontario Medical Association on a voluntary basis and is now being carried on by the College of Physicians and Surgeons of Ontario on a mandatory basis. This review covers all aspects of the practice of radiology in these facilities. It must also be pointed out that in order to bill OHIP, all claims must be submitted by a licensed physician who is governed by all the rules and regulations of the College of Physicians and Surgeons of Ontario.

From the patients' perspective, in the setting of a private diagnostic clinic they are dealt with on a more personal basis and they feel far more comfortable in familiar surroundings. They are able to ask questions and get answers. Patients are naturally anxious about these tests and feel freer to discuss their concern with our staff.

Also, many of our patients are on a fixed budget and cannot afford to spend an extra bus or taxi fare. Many patients work and cannot afford to take extra time off work. They do not have to wait too long for their tests. There are flexible appointment times to suit the patients.

We also have excellent communications with our referring doctors, and in many cases verbal reports are requested. A physician may suspect a fracture or pneumonia and have this confirmed by X-ray within the hour. In this way there is no delay in instituting treatment. This is the kind of service I am talking about.

I have heard it said that we are in competition with the hospitals and that some hospitals are losing patients to private clinics. I find this hard to believe. If you think I am wrong, just try to get an appointment for any type of test in a hospital and see what the waiting list is like. You just have to consult the people of Ontario to hear their frustrations about the hospital outpatient clinics.

I have so many times come across patients who have been to a hospital first and have been told by the hospital to see their doctors and then have been sent home without being given tests or medications. These patients end up coming to us for the service. I have found cases with fractures and also other abnormalities in some of the patients who were sent away by the hospitals. I feel that as far as their outpatient departments are concerned, they are already overcrowded. I can rest my case by saying that we are not competing with the hospitals, because we do not have to.

Far from this, we complement hospitals by relieving them from that extra burden which they are not equipped to handle. You may ask, why not equip the hospital to handle the extra load? Equipment alone will run into millions of dollars. How about the buildings? What about staff? All these things cost a whole lot of money. I think the hospitals are doing a good job and should be encouraged to do what they do best, and that is inpatient care.

What about community clinics? They have a place, but these should be located in areas where they are needed. Whether there will be any savings is open to question. However, it would be a false economy to get rid of a functioning system and replace it with an unknown entity, and that is exactly what this amendment will do if it is passed in its present form.

1630

I cannot see how any private clinic could operate in the uncertainty that this bill will create. How can anyone commit funds to replace equipment if he does not know whether his licence will be renewed or not? How can he sign a lease? What will he tell his employees—that their jobs will disappear if his licence is not renewed? I say that it will create an impossible situation. Then what should be done?

Now I would like to bring to your attention the concern of the employees in the private clinics. As in hospitals, X-ray technologists and other clerical staff are the backbone of the X-ray department. We work very hard to provide quality health service to the patients. If this bill is passed in its present form, we feel employees in the private sector will be affected. In some cases, there might even be job losses. There is also a possibility that employees would end up with extra responsibilities and greater workloads. This would have a direct effect on the quality of the patients' care.

We are as concerned as everyone should be about the rising cost of medical care in this province. We recognize the need to have quality care, and certainly there are deficiencies in the present system which need to be corrected. However, any changes should be done in a fair manner and in full consultation with those directly involved.

We live in an age of glasnost and perestroika, when the eastern bloc countries are leaning towards democratic principles. In this country, where democracy is taken for granted, we have a decision which will impact on the livelihood and wellbeing of a great many of its citizens being made without consultation. I think it is time the

Peterson government wakes up and governs as it was elected to do in a democratic way and not to be stamped into this type of decision which it may later regret. What is needed is more consultation and not confrontation.

I thank you for affording me this opportunity to make my views known to you today.

The Chair: Thank you very much, Mr Joshi. I just would like to inform the committee that Dr Gervais has arrived from Windsor. He had difficulty getting here. I would like to fit him in in about five minutes and give him a 10-minute slot. Have any of you got questions for Mr Joshi? Okay. Thank you very much for your presentation. Dr Gervais, please come forward.

Dr Gervais: I am sorry to be as late as I was. I am probably being followed by a large number of uniformed policemen at the present time.

The Chair: They may not find you.

Dr Gervais: Plus you may find a Canadian Airlines International employee missing when you get back to the airport.

Mr Reville: We should warn the witness he is on television at the moment.

The Chair: That is true; I had forgotten. Please begin.

CHARLES GERVAIS

Dr Gervais: "All argument is not deduction, and giving reasons in support of a judgement or statement is not necessarily (or even generally) giving logically conclusive reasons." That was said by Stuart Hampshire in 1940.

Coming all the way to Toronto to address the social development committee is a rather intimidating experience. Not unlike many doctors when confronted with new and threatening situations, I run and look for my books. About eight o'clock last Saturday night, I was sitting hunched over my desk behind a pile of books including the *Logic of Moral Discourse*, *Basic Essays on Politics and Philosophy* by Marx and Engels and *Winning Through Intimidation*. I looked up and there was my four-year-old son watching me.

He asked the inevitable question, which was, "Daddy, what are you doing?" I said, "I'm writing a speech to go to talk to the government in Toronto on Monday." He looked at me and he thought a minute and he said, "What's the government?" I said, "Well, the government is the group of men and women who make up the laws that we all must live by." I was pretty pleased with myself. He looked at me and said, "They must be pretty big people, Daddy."

I am privileged to have been selected to speak to you as a private citizen concerning Bill 147. Most of those who will address you during these four days of hearings have a vested interest in doing so. As a citizen, an employer, a physician and a practising specialist in diagnostic radiology, Bill 147 will affect me personally in a number of ways. Beyond this, I have an obligation as a doctor to inform you about what I see as the potential negative effects this bill may have on hundreds of thousands of Ontario citizens over the next five to 10 years.

Like most doctors, I know very little about the workings of government. As I understand the current situation, your committee approved an amendment to section 7 which suddenly expanded the scope of this bill, designed for 20 outpatient surgical facilities, to include 500 or 600 diagnostic imaging facilities and other diagnostic facilities throughout the province. According to recent propaganda being circulated by the executive membership of the Ontario Hospital Association, this amendment was the direct result of pressure by the OHA chairman, Dr Dennis G Tuck, during his meeting with your committee on 17 August.

Understandably, the providers of health care cried foul, and then the bill was tossed back to this standing committee for public hearings. The hearings consist basically of two groups of individuals. There are a selected number of well-dressed gentlemen with briefcases politely asserting that your committee made an error in judgement by submitting the bill in this format. These presenters will be interspersed with an equal number of equally well-dressed gentlemen with briefcases and ladies who will politely and heartily agree with your previous decision. Why does it always seem that I belong to that first group?

All of us operate under the same basic mandate: to improve the quality of life of the public we serve. Where we disagree is in terms of how this goal can be achieved to produce optimal medical care in the province of Ontario through the 1990s.

The world is changing. The socialist doctrines of Marx and Engels are the basis of traditional political rhetoric. It is easy to bamboozle the public into accepting increased governmental control and intervention in the public interest. The public generally demonstrates little concern over the trampling of rights and freedoms of small groups of individuals as long as it is for the public good; that is, until the public begins to suffer inconvenience and until the range or

quality of the services which it is being supplied with is significantly decreased.

The current changes in Poland, Hungary and East Germany are excellent examples of how socialism sounds fine on paper, but simply does not work on a day-to-day basis in our context. Canada, and Ontario in particular, has traditionally had one of the highest standards of medical care in the world. Why? One reason is that highly motivated young individuals choose a career in medicine, a career which offers the opportunity for social service, ongoing education, prestige and financial rewards commensurate with their training and responsibility. I have seen it: do not think I am not being realistic.

North American medical school applications are at their lowest level in decades. The health care system in Ontario is in serious trouble. Costs are spiralling. There are long waits for computerized axial tomography scans, outpatient surgery and hospital staff shortages. Once again, rather than seek the co-operation of the medical profession, the government is threatening to impose a law which may create more problems than it solves and may cost far more than it saves in the long run, both financially and politically.

As health care providers, we recognize the government's concerns regarding cost control. No one knows as much about cost-efficient delivery of a full range of imaging services to the public as those of us who survive in the existing free market structure.

It is illogical for the government to be pushed by a handful of individuals, such as the few dozen administrators who make up the OHA, who have a vested interest in this sort of legislation. At present hospitals are having difficulty, and that is true. They are unable to compete on equal terms with independent outpatient clinics with respect to quality, range of services, accessibility, reliability and cost—all of this despite most of their overhead, including their equipment, being paid for by private funds.

Private community-based clinics provide what the public now demands: modern, clean, prompt, efficient, quality imaging services. If we do not provide this level of service, the public simply does not come.

1640

The Ontario Hospital Association, apparently unable to run its facilities cost-efficiently despite an ever-increasing public subsidy, is advocating a step back into the dark ages of centralization. Ontario patients will no longer accept being herded into large medicinal hospital waiting rooms filled with a cacophony of moaning winos

and screaming children, where they must compete with acutely injured patients and the chronically ill for limited hospital resources.

The Chair: Dr Gervais, I have two people on the committee who would like to present questions. You have about six minutes left. I see you are just beginning the second half of your brief, so I would leave it to you as to how you want to summarize.

Dr Gervais: Summarize? I was just getting warmed up.

The Chair: Yes.

Dr Gervais: It is okay. You have the brief anyway. I can summarize by simply saying that I think what is needed is an understanding from you, the members of this committee—and I submit that most respectfully—that there are people out here in the province at the present time performing a wide range of services who are well qualified to offer input into the development of an appropriate piece of legislation to deal with the problems that you are now facing, problems of access, problems of cost control. We do it from day to day.

We would be willing to participate; we would be anxious to participate. I think what I would like to suggest as a citizen, as an individual, as a physician, as whatever, is that the committee consider looking at the development of a committee to study these problems, involving the physicians who now operate in this field and other specialists in this field and committee members. What I suggest calling this is a provincial imaging services planning committee. I strongly suggest that Bill 147, which I have read several times and have a copy of, is a very scary piece of legislation, and it is certainly not one that I would relish having anything to do with as a professional in this province.

The Chair: Mr Elliot, your first question.

Mr Elliot: I am just going to thank you briefly, because I know the other questioner is my colleague Ken Keyes, and he is much more knowledgeable in these matters than myself. I am glad you made your flight and got here in time to make your presentation. I found it very worth while.

Mr Keyes: Madam Chair, I am sure that Walt would be the only one who would say that. The opposition members would not, particularly Mr Eves, after last week in Whitby perhaps.

The Chair: Do you have a question, Mr Keyes?

Mr Keyes: Yes, I have a question. I had a chance to quickly jump ahead, Doctor, and there

are three interesting statements, one that Walt has covered about the willingness to participate in trying to place imaging services appropriately in the province. I do appreciate it as well.

The three briefs we have had so far today all talk about the elimination of the existing private clinics. They seem to be reading more into the legislation than what I see, and I have sat through a month of watching this. So I would like you to give me more reasons why you feel that is true.

The second thing, which I do not want to take out of your time, is that I think it is fair that we should ask Mr Sharpe from our legal department to explain the legislation, HARP and the atomic energy legislation and their relationship to the Independent Health Facilities Act, because the presenters have also told us that HARP provides all the quality control we need, and also the Atomic Energy Control Act. I do not really believe that is exactly so.

But coming back, we have had three now and they have all said the same, from that point of view. They believe that the private clinic will—you have used it the strongest of all, the elimination of existing private clinics. That is certainly not the intent. The need is there. Our role is to try to enhance and work with them to see that they fulfil those needs.

Dr Gervais: To answer your question specifically, the reason that I feel this legislation is likely to result in a significant change in the way in which the clinics are run, ergo the elimination of clinics in the province, is that no businessman—and at the present time physicians in this province are independent contractors who, although all employed by the same benevolent boss, all operate under the same set of financial rules that any corporation operates under—no private business could possibly operate under the way in which this legislation is written.

Most of our financial profiles are made up to amortize expensive equipment which we bought, not through public funds but with our own funds, our corporate funds, over periods in excess of six, 10, even 12 years. The hospital guidelines are for 15-year amortization for their equipment. When the commercial bankers got wind of Bill 147, everyone got a visit: "Hi, guys, how are things going? Oh, so you are having licences guaranteed for one year. What happens after that?" "If we are good, they will let us hang around for another five years and then they will reassess it."

Imagine if that was the relationship you had to have with your banker concerning your house. You probably would not be buying a house,

because they are looking at an X number of years' mortgage, and all you can say is, "I can guarantee that I will pay your bills for next year, and after that, if everything goes okay, we will still continue to pay the bills." So that is one major reason.

There are a number of other reasons that are inherent in this legislation. It is an extremely restrictive piece of legislation. We do not have time, but I would be glad to pull it out and go clause by clause by the ones I have put double and triple asterisks on and are just very scary if you have to operate in a business context under them. I am a physician first, but I am a physician who also operates a business with a large number of employees. By the way, there are 4,000 people, approximately, who are going to be affected by the potential changes in this, at least directly, in the province. I have to keep those people in mind as well.

The Chair: Mr Keyes has asked for a brief explanation of the HARP legislation, and Mr Sharpe says it will take him one minute to explain that. Does the committee want that one-minute explanation at this moment?

Mr Keyes: I think we can manage one minute there for such eloquent legal advice.

Mr Sharpe: I will try to keep it under one minute.

First, I should say that we do have a summary, if the committee would like it, that we could perhaps provide tomorrow of the two statutes that Mr Keyes referred to.

The Chair: Very well. I think we would like to have those.

Mr Sharpe: Okay. Very briefly, the HARP licensing setup is limited to quality assurance of the machinery and its staffing. It more properly regulates the radiation technicians and the medical physicists. Medical physicists and technicians are people who test the equipment and look at whether it meets the proper safety standards. The legislation does not regulate and cannot, by the limitation of its regulation-making powers, the quality assurance of the medical care dimension. The Atomic Energy Control Act regulates the transportation and storage of isotopes. There is no regulation, either federally or provincially, of patients' safety in relation to nuclear medicine. Finally, there is no public need component in the issuing of approvals or licences under either HARP or the Atomic Energy Control Act or the regulations.

The Chair: Thank you very much. I think that was under one minute.

Mr Keyes: Could he just give us one minute? I am going to try to catch Dr Gervais. He said that he thought HARP could be used to determine the number of such facilities as these and their location in the province. I do not see how that fits at all under HARP. So if you can give me the quick answer, I will take it, otherwise I will catch Dr Gervais.

The Chair: Quick.

Mr Sharpe: Very quick. There is an approval process under HARP. I do not know the ins and outs of it, but I would imagine there is some means of compiling all the approvals that have been given under HARP. So there may be a means of tracking it, but as I indicated, there is really no mechanism for ensuring the quality and standard of the medical care given in these facilities.

Mr Keyes: Surely HARP looks at the technical, physical clinic being set up, not determining need.

Mr Sharpe: And the standards they use.

Mr Keyes: That is what he seems to be suggesting, the way he views it.

The Chair: All right, you may want, together, to proceed with that item further.

Dr Miller, please. You are both presenting together.

Dr M. Miller: Yes. I am Dr Murray Miller and this is Dr Anne Marriott.

The Chair: I just noticed that. So you are going to share your time like the other two doctors did? That is fine.

Dr M. Miller: I did not see the other two doctors, but we will share our time.

The Chair: Okay, thank you. We really would like you to have some time for questions from the committee.

QUEENSWAY GENERAL HOSPITAL

Dr M. Miller: My name is Dr Murray Miller. I am a radiologist in practice at Queensway General Hospital in Etobicoke. I practise in the group practice setting with five other radiologists and we work in the hospital in private offices. I am here on my own behalf.

This, as I said, is Anne Marriott. She is my colleague and one of my partners and she is the chairman of our department of diagnostic imaging at Queensway Hospital.

I want to present my brief from the perspective of a relatively recent graduate. I graduated from medical school at the University of Manitoba in 1982 and completed my radiology training at the

University of Toronto in 1987. I received my fellowship from the Royal College of Physicians and Surgeons of Canada the same year.

1650

The purpose of my brief is to outline a number of concerns I have regarding amendment 7, the so-called Reville amendment, to Bill 147. I feel it will have a significant impact on accessibility. In addition, I would like to address to the committee some questions that I have which I hope answers can be provided for.

The initial intent of the bill as was outlined by the Minister of Health (Mrs Caplan) on 9 August was to "promote and foster the growth of community-based health services" and to bring closer to the people services that were only available in centralized hospitals. It was also supposed to be a method by which quality assurance could be carried out in these facilities, and it was specifically, she said, quality assurance relating to procedures previously done exclusively in hospital.

I feel that the original goals of the bill were laudable in principle. Unfortunately, the amendment introduced by Mr Reville on 29 August substantially altered the initial intent and meaning of this bill. I believe it has increased the scope of the facilities captured by about 30 times. In addition, many of the facilities which are now captured have in fact been doing procedures which have been done safely on an outpatient basis for many decades. Because of this amendment, there will be less accessibility, and a new bottleneck will develop in the health care system. I will explain why I believe that.

I briefly just wanted to point out a few inaccuracies that were previously presented to your committee. On Tuesday 9 August, Dr MacMillan suggested that when addressing the question of radiology billings, "You have to be very careful when you look at figures like those, because radiologists, more than any other physicians, tend to bill in groups." In other words, the work of many radiologists is frequently billed under one person.

Despite this, on introducing the amendment, Mr Reville used the terms "clinic" and "person" interchangeably. In fact, the large majority of the 304 clinics he referred to are group practices. In addition, I believe the number to be around 600, not 304.

Furthermore, I wanted to expand on a point that was brought up by Ms Hošek on Tuesday 9 August. She asked Dr MacMillan whether radiology services require referral by other

physicians. He answered yes but did not elaborate.

Perhaps I could elaborate. Unlike, say, a walk-in clinic, radiologists do not create a demand for their services simply by being in a location. We do not pull in patients off the street and we do not generate work for ourselves. Unfortunately, it appears that this committee has been given that impression. I want to reiterate that all patients in the province must be referred by a licensed physician in the province. An imaging facility can only exist where there are licensed physicians to make referrals.

The amendment was introduced with figures on cost and utilization. The only way to decrease these is to limit accessibility.

What the bill, as proposed, will do—this is my understanding, and you may correct me—is eliminate technical fees now set out in the OHIP fee schedule. Apparently, some global facility fee will replace it. District health council approval will be necessary for new facilities to open.

One of the questions is, how do we know that this is going to limit accessibility? I think that is a reasonable question. When you look at the scenario that is proposed by the bill, that situation is precisely analogous to what happens with CAT scanning today.

Just a little bit of history from a radiologist's perspective: CAT scanning is an imaging modality that was introduced in the early 1970s. In 1974, when it came into Ontario, the government mandated that the approval for CAT scanners had to come from the district health council, and along with it, a global facility fee was introduced. A technical fee was never introduced for CAT scanning, but the facility fee was supposed to replace it.

I think one of the reasons we are quite fearful of this is that the annual facility fee of \$150,000 granted to institutions receiving CAT scanners in 1974 has increased by precisely zero per cent and remains today \$150,000. In addition, there is still limited accessibility 15 years later.

Despite the fact that Queensway General Hospital is a well-recognized, 429-bed hospital in southern Etobicoke, were it not for the assistance and intervention of our local Liberal MPPs, we would not be any closer today to getting a CAT scanner than we were two or 10 years ago. Patients still have to be sent daily by ambulance to other facilities to have scanning done. This increases the stress on the ambulance system, makes accessibility for critically ill patients more difficult and increases hospital

stays. In addition, because of the long waiting list, less critically ill patients can often not be diagnosed until their illness has progressed further than it was.

There is no comfort in these facts when I see these measures will now apply to such basic facilities as chest X-ray and ultrasound. I rue the day that we have a 10-month waiting list for obstetrical ultrasound in our hospital. At present in our hospital we have a three- to four-week waiting list for ultrasound, particularly obstetrical ultrasound. There is approximately a two-week waiting list for mammography. There is a four-week waiting list for thyroid scans and a four-week waiting list for nuclear medicine cardiac scans.

As a group, and I am again referring to our radiology group, we also service two clinics, each approximately five kilometres from the hospital. We offer all the above services in the clinics, and the waiting list tends to be no longer than one week. If the minister saw fit not to license these facilities, the hospital would be overloaded. Waiting lists would increase dramatically, yet without a T fee, revenue would not. Even with building expansion and new equipment, the hospital simply could not provide the service. I know that five kilometres may not seem far to many members of this committee, but bear in mind that many of these patients are elderly and infirm and would have to travel first to the doctor's office, be assessed, then travel to the hospital to have their X-rays done, then travel back to the doctor's office. I think that would be wrong.

Dr Marriott: As head of the department of diagnostic imaging at Queensway General Hospital, I would like to address the issue of radiology funding to hospitals. At present, the hospital receives a global budget for all inpatient radiology procedures and is paid a prorated portion of the technical component of the OHIP schedule for outpatients. Most, if not all, hospitals encourage outpatient use of their facilities, because the generation of the technical component fee may then be used to provide revenue for the hospital.

In the past, the fact that a piece of equipment generated a certain amount of outpatient revenue could be used as a basis for acquiring a new piece of equipment when the old piece was worn out or medically outdated. The facility fee which may or may not be provided will be substantially smaller, based on past experience with CAT budgeting and global budgeting for inpatients. This may have even more far-reaching effects on

hospitals, as many use the income generated by radiology departments for other areas of the hospital as well. As an active member of the hospital staff, it seems inevitable that eventually we will be able to offer even fewer services.

Second, as a woman and a radiologist, I am intimately concerned with women's health issues. Mr Reville, his New Democratic Party colleagues and several Liberal members have also expressed a high degree of concern throughout these hearings about women's issues. It is interesting that many of the services provided by our offices are specifically and almost exclusively provided to women, the most obvious being mammography and obstetrical pelvic and breast ultrasound. Mr Reville has referred to statistics of increased numbers of procedures in diagnostic imaging clinics. Looking at our own statistics, almost all of the increased utilization that we have experienced over the past year has been in mammography and obstetrical or pelvic ultrasound. I am concerned that women as a group will be the health care users most negatively affected by this amendment to Bill 147.

Dr M. Miller: Another issue I just wanted to briefly touch upon is an apparent paradox introduced by this bill. I hope the committee can address this. At present a chiropractor or podiatrist can operate X-ray equipment, and I think that is under HARP. Despite the fact that I have extensive training in imaging, physics, radiation safety and diagnosis, I cannot, at least not without the approval of the district health council and the minister. These strike me as particularly odd in view of the fact that my MPP says the minister's principal interest in this bill is quality control.

Finally, I have a question which I hope someone here can answer. As the bill is at present, when proclaimed, T fees will be abolished. The bill clearly says that no facility fee will be paid until a licence is given. If a facility is grandfathered under the present terms, are the patients to be billed directly for the technical fee until a licence is issued or is a new fee going to be established? I believe without some type of fee to replace the T fee, virtually every clinic I am aware of in this province will be able to function for only a period of a few weeks, and many or all will close. Because the technical component of these examinations is so expensive, I cannot imagine beginning to bill the patients for the present technical fee.

In summary, I look forward with some trepidation to my future as a radiologist and to the

future of our health care system. I see decreased accessibility, increased waiting lists and resultant increased morbidity. This will certainly harm our hospital and, I am sure, many others and will create administrative nightmares for both the government and physicians. I respectfully remind you that we provide diagnostic services. Whether one is talking about cancer patients or cardiac surgery, until a diagnosis is made, treatment cannot commence. Without adequate diagnostic facilities, everything will get backlogged further and further.

Thank you very much for allowing us to address your committee.

The Chair: Mr Reville, do you have a short question?

1700

Mr Reville: I have a quick one. Thank you for your presentation. Actually, I have a question of Dr MacMillan or Mr Sharpe, which is basically your question. I think that is a really appropriate question. I would like to refer you to the second-last paragraph of Dr Miller's brief. He is concerned about the transition period. If this act were proclaimed as it now reads and the technical fee disappeared, what would happen to people? That would be a useful thing for everybody to hear.

Mr Sharpe: I believe that the answer is found in section 24 of the bill and that is the general funding mechanism, that the grandfathered facilities will fall under that mechanism and will be funded the same as if the facilities ultimately had a licence. Whether the mechanism that is used to fund retains the character of a kind of T fee—in other words, an individual service fee—or is different is, of course, ultimately a decision to be worked out by the ministry in conjunction with the various clinics. But there is indeed a funding mechanism under Bill 147 for the grandfathered clinics, so it would be just a matter of moving the T-fee concept from the Health Insurance Act to Bill 147.

Dr M. Miller: Can I speak directly to Mr Sharpe?

The Chair: I am running into a great deal of choice-making at this moment, because we are now at the end of your time.

Mr Reville: This is a really critical point, I would think.

The Chair: I am asking the committee for direction then, because I have another questioner and your time is up. Agreed? Okay. You will ask one question then, if it will help to clarify.

Dr M. Miller: I understand that would happen. The question I have, as I understand again, is that the day the bill is proclaimed, T fees go. You are saying the ministry will have to look at clinics and make a decision on what happens in between. I mean, I assume it is going to take some time to go clinic by clinic and determine what sort of fee will be put in.

Mr Sharpe: Again, obviously I cannot speak for the government and the minister on this in terms of timing, but I cannot see how one could proclaim this section until there is a proper alternative funding mechanism ready to go that actually would have to be in place. It may well be that that mechanism simply will be a kind of T fee under a different name for the time being. Then there is a year of grandfathering to try to work with the clinics, and once they are licensed, they will determine what the funding mechanism will be, whether for some it will continue to be that or something different.

The Chair: Does that answer your question, Dr Miller?

Dr M. Miller: Sort of.

The Chair: Mr Reville, do you feel the answer is complete for you at this moment?

Mr Reville: Yes, I wanted to make sure that Dr Miller's question got answered.

The Chair: Thank you very much, Mr Sharpe. Have you got a one-minute question, Mrs Cunningham?

Mrs Cunningham: Probably about 30 seconds. I would like to ask you a question about what you said the minister's principal interest was, and that is quality control. That is what you said.

Dr M. Miller: Yes.

Mrs Cunningham: I am interested in your enlightening the committee on this to whatever extent you wish. In quality control in your business, it seems to me that you are looking at probably two things: the quality of the X-ray and the quality of the interpretation. Do you have any kind of experience whether the quality control issue should be bigger in independent health facilities or in independent clinics than in hospitals now? I mean, how do we know about quality control in either place? And could one make any kind of assumption that one would be better than the other, or do they all suffer with the same challenges depending on equipment and quality of physicians or whatever?

Dr M. Miller: I think that either Anne or I could answer that. I can only speak from my own

experience. I mean, we are the same group of radiologists who work at both the hospital and the clinics, and I think that we always maintain the same standards at either place. We do make decisions on dollars, but the fact is that in our practice, quality is foremost.

In terms of determining the quality of the film, that is relatively easy. You can do all sorts of physical tests on film and determine what sort of quality image you are getting. In terms of the quality of the interpretation, I think it is almost impossible to assure that someone is always reading a film properly, because they are interpretations.

Dr Marriott: If I might just say a word, the quality of the physical care in this province really is run by the College of Physicians and Surgeons of Ontario. That is a body that governs all of us.

Dr M. Miller: We are all licensed radiologists.

The Chair: Thank you very much, Dr Miller and Dr Marriott. I am sorry that I have to move us along, but the other people will be treated unfairly if I do not do that.

Dr Stolberg, please. Dr Stolberg has presented his brief to us in advance. You have received it previous to this presentation. Please begin.

REGIONAL RADIOLOGY ADVISORY COMMITTEE HAMILTON DISTRICT

Dr Stolberg: Members of the committee, I would like to thank you, first of all, for the opportunity and permission to appear here this afternoon on behalf of the Regional Radiology Advisory Committee to the health services committee of the district health council in Hamilton.

I think I will just summarize my brief and let you ask questions, because basically it may be of interest to you that we represent a fairly large community; at the same time, in the context of our committee, academic radiology—that is the university department—as well as private radiology, the chiefs of all X-ray departments, and other organizations such as the school of radiography, radiography technicians and so on who are incorporated in our particular advisory group. I believe that the existence of such a group is probably unique in Ontario. I do not know of any other.

I would like to address you on three terms, and those are accessibility, quality and cost control. Accessibility, I think, we have no problem with, because I do not think there is any problem with

accessibility in this province on any scale that deserves particular attention here this afternoon.

As far as quality control is concerned, I think it has been outlined to us very, very clearly where we stand with the Healing Arts Radiation Protection Act, which looks after the actual facility and its quality, and the interpretation, which is a physician function and rests with the College of Physicians and Surgeons of Ontario.

Please keep one thing in mind; that is, you have to have a radiologist in the facility to make sure that it meets with the provisions of the HARP act, Dr MacMillan. You cannot very well do that unless I supervise the issue and do what is necessary to meet with those provisions.

I think I can say a few words about the quality controls of the college of physicians and surgeons, because I happen to be on the peer review committee as radiology ad hoc member, and our facility was the first one in Ontario that was inspected. It is quite a rigid process. It is certainly not voluntary. The question now is only, how we can do enough, and frequently enough, to get the results that we feel are necessary?

I do not think that Bill 147 is going to help us. I do not think that the amendment is going to help us. It will have to be done; it will have to be done regularly. I am all in favour of this—otherwise I would not have volunteered to play that role—but I also realize that this requires a lot of work and probably some funding.

We have an accreditation mechanism for hospitals in place where exactly the same thing happens. I think the honourable members of this committee probably know that there is hospital accreditation every three years, where everything, including the X-ray department, is looked through very, very carefully in terms of performance and all the rest of it. I believe that the same could, of course, happen with our facilities, our practices as they are, but that has to be done, and I would prefer the term "accreditation" to the term "licensing."

I would also like to draw to your attention that I believe it is absolutely impossible to maintain any quality in an environment that is not absolutely stable. With the five-year limitation on these licences, it has taken me some 25 years of pretty hard work and a lot of investment to get where we are today in our group of private offices. In an unstable environment, nobody would invest the energy or the money that is needed to get quality to actually work.

1710

As far as cost restraint is concerned, there is an interesting point. If you look at the definition of a

"consultant radiologist" that I gave you, you will find that he is a qualified specialist, he has to be there to supervise and he has to be qualified in ultrasound as in everything else.

That precludes a number of things. That precludes the examinations being done by unqualified physicians. We do not support that. That precludes self-referrals. As has been said several times this afternoon, please do not forget that I do not generate these referrals. I have no interest in these referrals. I sometimes do not know how they originate and why they chose our particular facility, but we do not generate referrals and I think this is the interesting part.

If you take a look at the actual figures and analyse the figures that were given to us this afternoon, you will find that the cost of each individual examination is absolutely reasonable. For our own facility, an average examination is approximately \$40. I do not think that on the international scene or national scene anybody can do better. It is the number of examinations performed that actually make up what Dr MacMillan has shown us.

If I tell you that there is a lot of investment, why would these clinics exist unless they were needed, unless there were referrals? Why are they there? If I open a new office, the only thing I can do is drain from my other office, so actually there is no expense to the health care system but there is considerable expense to me if I duplicate the facility, because I now have to support two offices rather than one.

As long as we stick with the principle of referred practice, self-referral, referral to facilities in which you have a financial interest and other aberrant practice patterns that have developed in the last couple of years have no place in that.

In summary then, I believe that quality control can be regulated through the college of physicians and surgeons, that accessibility is good and that cost control can be handled by looking at referral patterns and practice patterns and by looking at some of the things that none of us really would support if we had any say in the matter.

The Chair: Thank you very much. Are there any questions?

Mr Keyes: My question is to ask the doctor to expand a bit further on utilization. I think we know that in most of our practice of medicine, utilization is one of the things that concerns us. In working in partnership with the people in it, how do we look at that and be sure that utilization—how will I put it—is absolutely necessary and

important to the wellbeing of the individual? You have made some comment at the bottom of page 5 with regard to looking at it with very close scrutiny, making sure they operate efficiently, working with district health councils, etc, but can you go a bit further?

Dr Stolberg: Yes. First and foremost, I think it is my responsibility to scrutinize each and every request for an examination and turn it down if I feel that it is not necessary, and I have done that. That requires that I have a very close relationship with the referring physician. Incidentally, the community-based kind of radiology practice that we carry out means a very close relationship, because that doctor is right down the corridor and I can say: "Look, why? Is this absolutely necessary?"

To solve a clinical problem expeditiously and with the least risk and cost is exactly what I am all about, so this is the first one. The second one is that I do not generate or influence or ask somebody to refer somebody to me. The third one is that I do not believe in self-referral and I do not believe in referral into facilities in which the referring physician has a financial interest. I cannot go beyond that.

The Chair: Thank you very much for summarizing your brief and answering so succinctly.

The representatives of the North York General Hospital, please, Dr Gershater. I may not have gotten your name correctly. If I have not, please correct me.

NORTH YORK GENERAL HOSPITAL

Dr Gershater: I would like to thank you for giving me the opportunity to address you regarding my concerns with the proposed amendment to Bill 147, the Independent Health Facilities Act, vis-à-vis the inclusion of diagnostic imaging facilities.

I am a diagnostic radiologist in a group practice of eight radiologists, and while we are in private office practice, our major focus is at a large general hospital, the North York General Hospital in Toronto, where I am the chief of the department of diagnostic imaging. I have a teaching appointment at the University of Toronto, and I believe these various activities give me a fairly broad perspective on the practice of radiology.

The main reason for the proposed amendment is to limit increases in the volume of outpatient diagnostic imaging being done in the province. The reasons for these increases are multiple and I would caution against a simplistic assumption

that much of the increase is unnecessary and needs to be controlled.

Among the reasons for the increase are such factors as introduction of electronic billing, which has improved the efficiency of charge capture recently, the ability of hospitals only recently to bill OHIP for professional fees for CAT scans and a natural increase which occurs because of increased sophistication in diagnostic techniques, more of which are always needed as the population ages.

Let me give you a couple of examples. In this room there are likely one or more women who are going to get breast cancer. This disease is of epidemic proportions in Canada and will afflict one in 10 women. Another example is cancer of the prostate. It is the second commonest malignancy in men after lung cancer. Likely there are some men in this room who will suffer from that disease; 28,000 men die annually in the United States of prostate cancer and this number is increasing. Diagnostic imaging tests are being done to diagnose and treat this disease early, and there are many other examples.

The point I wish to make is to caution you not to assume that there is an epidemic of diagnostic imaging that needs to be controlled, but rather that there are large numbers of curable disorders that need to be controlled, and can be, by using modern diagnostic imaging techniques. As these methods improve and become more sophisticated each year and as our population ages, it is to be expected and is entirely proper that the numbers of diagnostic images done should increase. Furthermore, we need to recognize that patients are well-informed and demanding. They read popular periodicals, watch television and read the press. All of these factors contribute to an increasing number of examinations being done.

The reason I make these points is that I believe the adoption of the amendment to Bill 147 vis-à-vis radiology would have a devastating effect on our delivery of health care in this province. It would have the inevitable result of creating a monstrous bottleneck, with an inability for us to provide adequate diagnostic imaging to the public.

Of outpatient diagnostic imaging in Ontario, 51 per cent is done outside of hospitals. It is quite impossible for hospitals to absorb large numbers of additional outpatients. As I indicated, I am the chief of diagnostic imaging at the North York General Hospital. I also chair the medical advisory committee at that hospital and consequently sit on the hospital's budget committees. I can attest to the fact that the hospital cannot

absorb large numbers of extra outpatients. No new private facilities will be opened and many smaller facilities will undoubtedly close if this amendment is passed.

The result of this amendment will undoubtedly be layers of bureaucracy, which will lead to decreased efficiency. One- to five-year licences will make it impossible to negotiate leases and appropriately finance purchases of equipment, which have 10- to 15-year depreciation periods. If an individual is operating a private facility under a five-year licence and, for example, in year 2 or 3 a \$30,000 image intensifier tube blows, it will simply be impossible to replace this.

Our hospitals in Ontario are desperately short of high-tech imaging equipment. We cannot afford to overload the hospitals with more outpatient work that they cannot possibly absorb.

We have far too few CAT scanners. The waiting list for CAT scanners at my hospital is two months, and as has been indicated by earlier speakers, there are many hospitals in Ontario that do not even have CAT scanners. Virtually nonexistent in Ontario are magnetic resonance scanners, kidney lithotripsy machines and positron emission tomography scanners. Certainly gall-bladder lithotripsy is totally nonexistent in Ontario.

1720

I note in this morning's *Globe and Mail* that a poll commissioned by the Ontario Hospital Association and released yesterday finds that 48 per cent of the people polled are not confident that they can get quick access to high-tech procedures such as CAT scans, cancer treatment or heart surgery. It is of interest to me that the poll did not even ask the question about MR, lithotripsy, PET scanning, laser angioplasty and on and on. It only asked about CAT scanning, which, I would emphasize, is 1970s technology, and that was described as high-tech modern technology.

In many ways, Ontario has become a medical backwater in First World industrialized terms, and this amendment will cause us to fall even further behind.

It is of interest that in our OHIP schedule of benefits there are only two diagnostic imaging procedures that at present do not have technical fees; namely, CAT and MR scanning. Therefore, MR and CAT are not done in any private facility in Ontario. The result is a two-month waiting list for CAT in a hospital, or longer, and for practical purposes, MR is nonexistent in Ontario. Let me point out to you that in the city of Cairo there are

more MR scanners than in Toronto. In the city of Beijing, which I visited last year, there are per capita more MR scanners than in Toronto. By removing the T component from the fee schedule for all imaging procedures, one cannot but ultimately create waiting lists for all procedures.

Ripples of this proposed amendment have already occurred. Last week my hospital indicated to me that it intended to withdraw a purchase order for a needed piece of diagnostic imaging equipment because of the uncertainties created by the proposed amendment to Bill 147.

We are now witnessing two rather tragic situations in our health care system; namely, waiting lists of up to one year for coronary artery bypass surgery and the problems with Princess Margaret Hospital, of which you are all well aware, and as of last week I understand this is happening at the Toronto Bayview Regional Cancer Centre as well, that patients are being sent to faraway places, to the United States, to have their cancer therapy, their radiation therapy and chemotherapy. You have seen how ill those patients become, and they are probably in the local Holiday Inn while they are having that treatment done.

These two bottlenecks of bypass surgery and oncology are not a result of miscalculation by you, our present legislators; they are the consequence of poor planning by your predecessors. I would appeal to you to think very long and hard about the implications of the amendment to Bill 147. I am convinced it will cause a bottleneck in our delivery of health care in future years. It will be far worse even than those we are witnessing at present. The government does not have the mechanism to essentially run these health facilities and would have to create a huge bureaucracy to basically operate 600 nationalized facilities.

While I recognize that some controls, and particularly quality control, are appropriate and desirable, the proposed amendment would catch much more than you were after and would indeed be throwing out the baby with the bathwater. As you will undoubtedly hear from other briefs, the physicians are more than willing to meet with government to look at creative and fair ways of overcoming these difficulties.

Entrepreneurial diagnostic imaging facilities owned and operated by nonradiologists purely for profit are clearly a problem. I would emphasize, again, as briefs before me have done, that radiologists do not refer patients to themselves. Self-referral is clearly a problem that needs to be addressed.

In that regard, I would like to refer you to an article in the Wall Street Journal of 7 February 1988 which discussed the refusal of insurers in the United States to pay for needless medical tests. They listed the number of tests done in 1987 in the United States and astounding figures were found on the total annual costs of endoscopy; that is, putting a tube down from the front end or the rear end to look inside the gastro-intestinal tract. For the number of endoscopies performed in 1987, the cost in the United States was \$10 billion. That was estimated to be more than double all the costs, the total costs, of all chest radiographs and sonograms done in the United States that year. The cost of endoscopy was about equal to the total cost of the five most common diagnostic tests done: urinalysis, blood cholesterol, peripheral blood counts, electrocardiograms and pap smears. During that same period of time, there was no evidence that the incidence of death from cancer of the gastro-intestinal tract had appropriately decreased, so that is the kind of danger one runs into with monstrous amounts of self-referral and what it can cost. Endoscopy is generally a self-referred procedure.

I appeal to you once more to bring your wisdom and good judgement to bear on this matter and to reject the proposed amendment, which can only be to the ultimate detriment of our health care system.

The solution to our increased health care costs are not easy to find and we face enormous problems. I frequently hear comments by officials of the Ministry of Health describing our health care delivery in Ontario in glowing terms. I and my colleagues in medicine look at each other in total astonishment when we hear these pronouncements, as they generally do not seem to be describing in any way, shape or form the system under which we work.

The health care system in Ontario is clearly deteriorating. Our hospital received a four per cent increase in its budget last year; the costs to the hospital increased eight per cent. The difference was millions of dollars worth of health care that are just going down the drain, and we are watching this deteriorate in front of us.

Creative and imaginative solutions can be found. The proposed amendment would be destructive and I strongly urge its rejection.

Mr Keyes: I appreciate very much the presentation made by Dr Gershater and just wondered two things. On page 6, you refer to entrepreneurial diagnostic imaging facilities and I was just wondering if you have any idea from

your experience how widespread that actually is in the province.

Dr Gershater: I could not actually tell you how widespread it is. I can tell you about an interview I had today with a salesperson from one of the major ultrasound manufacturing companies who told me that nowadays she sells 50 per cent of her ultrasound machines to nonradiologists. Last week she sold a couple of machines to a realtor working with Re/Max, which is opening and going to run a facility. I understand that Bill 147 is in some ways designed to stop this kind of thing and would indeed do that. My problem with the amendment is if it is going to catch a lot more than that.

Mr Keyes: The last comment might be a redundant question, but I was wondering if you would express, as a doctor, any concerns about quality control in facilities that were being operated by nonprofessionals or by nonradiologists.

Dr Gershater: The question of quality control in general has been brought up before this afternoon. I would like to address that, if I could, in terms of the hospital and the private offices.

In the hospital, I think that diagnostic imaging is actually subjected to closer quality control than almost anything I know of in medicine. There is a whole army of specialists out there who look at every patient and every image with you. If you are wrong, you are going to hear from them. They are watching you like a hawk. I would say that in hospitals, quality control is not an issue.

Mr Keyes: I agree, but that is why we have quality control committees and that type of thing.

Dr Gershater: In the offices, the HARP commission generally deals with the technical aspects: the film, the equipment, the radiation and so on. As far as the other quality control of image interpretation in offices is concerned, I think that is something that needs to be addressed. The college is interested in that and I believe that is the basis for its approval of Bill 147. As we understood it from Dr Dixon, that is the college's only interest in this amendment. That is what they want. They are only interested in the quality control section of it. The rest of it does not interest them. He made that very clear at a meeting where he addressed the Ontario Association of Radiologists about a week ago. We were really at him about this, "Why is the college supporting this?"

Mrs Fawcett: I am just wondering, could you just expand a little bit on how you really feel this act will limit the access to radiology, and if there

is time, why you feel that is really going to happen?

Dr Gershater: I tried to address it in the brief. I think that a global form of funding is presumably what the government has in mind. We have to look at the history of the hospitals, and I mentioned the difference between eight per cent increases in cost and four per cent increases in funding. The hospitals are being throttled. They cannot continue to provide what is necessary.

When that is transferred to private facilities, there is no way they are going to continue to operate. Nobody will open a new facility and I am afraid that many smaller facilities are going to shut down. I do not know the situation in rural Ontario. There must be some serious implications for them. You will not have the huge sums of money that are necessary to invest to maintain the equipment and to keep functioning. That is going to just lead to a bottleneck through which all the patients go. They are going to have to be sent to the hospitals, and I explained at some length that the hospitals cannot deal with that.

Mrs Fawcett: So you feel that there really will be cutbacks.

Dr Gershater: I am absolutely convinced of it.

1730

The Chair: Thank you very much, Dr Gershater. I think we are going to hear about the rural situation immediately following your presentation, if I may have the representatives of the Norfolk General Hospital, please, Mr Shantz and Mrs Pringle. You may begin immediately.

NORFOLK GENERAL HOSPITAL

Mrs Pringle: First, may I tell you that I am the chairman of the board and this is our executive director? Norfolk General Hospital is a 187-bed hospital providing primary hospital care to 40,000 people in the western half of Haldimand-Norfolk. The hospital was founded in 1925 and is governed by a 23-member volunteer board of directors.

Norfolk General Hospital appreciates the opportunity to present its views on section 7 of Bill 147. Our board of directors is fully aware of the implications of Bill 147. This issue has been discussed numerous times, the most recent being at our regular board meeting on 24 October 1989.

The development of private diagnostic facilities is of particular concern to our hospital, as there is currently one such clinic under construction and another in the early planning stages.

We first learned of the development in early 1988. In May of that year, we wrote to both the Minister of Health and to the Scott Task Force on the Use and Provision of Medical Services to express our concern about the impact upon our hospital. The Haldimand-Norfolk District Health Council also wrote to the Scott task force regarding its lack of jurisdiction to comment about this duplication of services created by private diagnostic clinics. Copies of this correspondence are attached to this report.

Norfolk General Hospital provides the only radiology and ultrasound services in the town of Simcoe. We estimate that the hospital would lose a minimum of \$300,000 in revenue annually should this clinic open. If a second clinic opens, we would lose even more revenues. In spite of this loss of revenue, the hospital would still be expected and required to provide radiology and ultrasound services 24 hours a day, seven days a week. The waiting time now for elective work in our department ranges at various times of the year from one to two days to as long as two weeks. Emergencies are done immediately.

Norfolk General Hospital is currently operating at a cost of \$319.72 per patient day, well below similar hospitals in our peer group. While we have balanced our budget for the last several years, this year will be a real struggle. The loss of \$300,000 annually in revenue, through a development that is totally outside our control, will be devastating to the hospital.

I repeat again that there is a very short waiting time for these services in our community, so, clearly, the development of these private diagnostic clinics is a duplication of services in so far as ultrasound and X-ray are concerned.

Norfolk General Hospital strongly supports the position put forward to this committee by the Ontario Hospital Association, of which we are a member. Bill 147 should be used to rationalize services. We believe that these independent diagnostic clinics should be subject to a planning and approval process, as our hospitals are, to avoid duplication.

The other factor which our hospital believes is associated here was also put forward by the Ontario Hospital Association; that is, overservicing. It is not uncommon for physicians to own facilities in their area which are rented to diagnostic companies. In this situation, there exists an incentive for overservicing since the physician indirectly benefits by ensuring that the company receives sufficient workload to at least meet overhead costs.

If diagnostic equipment is entirely separated from referring practitioners, as in the case of hospital-based services, this incentive for over-servicing does not exist. Such independent diagnostic facilities should be subject to the same planning and approval process that hospital services receive: assessing need, potential for duplication, etc.

We have read with interest and reported to our board information coming out of the Premier's Council on Health Strategy and the minister's document entitled *Deciding the Future of our Health Care*. We share with the government its concern expressed in these reports about the rising use of diagnostic tests. The government must provide the legislative framework to allow the system to develop on criteria that clearly take into account the needs in the community from both the providers' and the consumers' point of view. Allowing uncontrolled establishment of diagnostic clinics will not, in our opinion, help make the government's goal of modifying an open-ended system.

While Norfolk General Hospital is a small player in the total system, we are nevertheless very important to the people in our community. On behalf of our board of directors and the people of our community, I thank you for hearing our concern.

The Chair: Thank you very much. I wanted to note that you are accompanied not by a doctor but by your CEO, Mr Shantz, and also by your MPP, Mr Miller. I would like to acknowledge his presence as well in your presentation. We have had this presentation from another perspective. Are there any questions?

Mr Grandmaitre: Are you the only diagnostic, as you call yourself, clinic in the area?

Mrs Pringle: Yes, we are.

Mr Grandmaitre: What is the waiting period at the present time?

Mrs Pringle: It is one to two days. If we are particularly busy, it could be up to two weeks, but we do emergencies right away. There is really no need for someone else to come in. This is why we would lose so much revenue, because OHIP pays directly to the hospital for each person who comes into a radiology clinic.

Mr Grandmaitre: One last question. Why would these people, the private clinic operators, open their business right across the street or down the road if there is no money involved? Why would they invest thousands and thousands of dollars? Is the business not there?

Mrs Pringle: There again, this one particular clinic and the other clinic that we hear about are both being built by physicians in a clinic, and they are bringing in these services, so obviously they want to make the money. I hate to say it.

Mr Grandmaitre: In other words, your staff are opening these clinics.

Mrs Pringle: That is right.

Mr Grandmaitre: They never consulted the board.

Mrs Pringle: That is right.

Mr Grandmaitre: So they must know that there is money being made then.

Mrs Pringle: That is right.

Mrs Cunningham: We are trying to get as much objective information as we can to make decisions around this. We had a presentation by Dr Anne Marriott, who works at the Queensway General Hospital in Etobicoke. They gave us some numbers saying they simply could not do all the work at Etobicoke General Hospital. I am wondering if you have done any consultation with the neighbouring hospitals around your hospital, in London, for instance, to find out if they are meeting the needs of their community or if they in fact rely on the independent radiology clinics.

Mrs Pringle: I would have no idea. I think a rural area is altogether a different piece of business, because we do not have the types of radiology work and teaching hospitals that you would get in a large centre.

The Chair: Mr Shantz, you have been been meeting with those people on a regional basis. Would be able to comment?

Mr Shantz: We have no problem at our hospital keeping up with the radiology services that we provide to our community. We have to refer people who want sophisticated services such as CAT scans and other types of radiology services to other centres, be they Hamilton, Brantford or London.

Mrs Cunningham: If I can just pursue that, because I really need to understand what you are trying to tell us, you are trying to tell us that in your particular hospital you are concerned about the opening of these clinics. Perhaps your concern about this bill or your support for the bill, the part you would like, would be a planned service where the need arises, but you are not saying that all independent clinics should not.

Mrs Pringle: No.

Mrs Cunningham: You are just talking about the planned service, is that correct?

Mrs Cunningham: We feel that it should be looked into to see if the need is definitely there before we duplicate. For instance, if two clinics open, or even one, they will go to that clinic and those people get the OHIP fee while the hospital needs that OHIP fee to balance the budget. This is part of our income; what we get from these X-rays, the people who come in who are referred to us.

Mrs Cunningham: Of course, my tremendous concern is that people go where the best service is. You will be very competitive in your hospital, I am hoping.

Mrs Pringle: Definitely, yes.

Mr Henderson: I have a couple of questions. I do not know if you have covered it, but I would assume that the reason the private clinic is happening is that there is a perception that the hospital cannot meet the need for service. Is that not your—

Mrs Pringle: No.

Mr Henderson: You feel that they are offering a redundant service in competition with you.

Mrs Pringle: That is right.

Mr Henderson: And that your service could be expanded in the hospital more cost-effectively.

Mrs Pringle: Provided we had the funding to keep our people. We have more people on to make the hours go later in the day, but we always have to have someone on call in the hospital all night long. This is where these other clinics cannot do the job, because they are not open all day. We are open 24 hours and we have to be. We have to have that staff there.

Mr Henderson: Presumably, if the other clinics cannot do the job as well and you are in the position to expand, the other clinics will not be able to compete with you and they will go out of business.

The Chair: Mr Shantz, do you have a comment?

Mr Shantz: Clearly, the decision is an entrepreneurial one. There is money there and the revenue will move from the hospital to the clinic. The hospital is then left with trying to balance its budget and the only way we have of doing that is cutting other services. As to competition, if the clinic is owned by the doctors who are referring, it really does not matter how good our service is, the referrals are going to go

to the clinic that is owned by those physicians, not to the hospital.

The Chair: Thank you very much for your presentation. I do not believe there are any further questions.

Mr Miller: I would just like to indicate that I appreciate the fact that Mrs Pringle and Harold Shantz took the time to come and make their presentation to our committee. I think that is how our system works effectively, by getting feedback from rural municipalities in particular. We are proud of that and want to say thanks for taking that time to come down today. It means a lot.

The Chair: You have all been extremely well behaved and disciplined. We are going to meet our deadline.

Mr Reville: It will not last.

Mr Keyes: Look at the lashes on our backs.

The Chair: Dr McKenzie from Kitchener, please. I think we have achieved an outstanding feat and I am very pleased with the way in which you have all co-operated with our deadline. Do we have Dr McKenzie from Kitchener? Please begin.

ERNEST MCKENZIE

Dr McKenzie: I am Dr Ernest McKenzie, a full-time private practice radiologist. I have several major concerns about Bill 147.

The first concern is that the goodwill value of nonprofit facilities will be nonexistent. I have recently invested a large sum in the goodwill component of a 20-year-old practice that has been providing service to the people of Ontario for a long time. Having this investment reduced to zero by Bill 147 will be a long-lasting financial burden. Also, our group has recently leased \$300,000 worth of new quality equipment. According to the correspondence from the association of radiologists, our private facility will need a licence to operate within one year after Bill 147 is passed. Then we may or may not get a licence. If we do not get a licence, how will the above cost be covered? If we do get a licence, it will only be for a maximum of five years and it may be revoked at any time. This makes long-term planning impossible and the future of private practice radiology uncertain.

The second major concern is more bureaucracy and less medicine. Our group will have to apply for a licence and, if it is granted, negotiate facility fees every year or so, negotiate the conditions of the licence, etc. These financial and operational uncertainties may force our facility to close.

Bill 147 allows for the appointment of a new director and staff, new expenses when existing groups could do and already do some of the regulating proposed in Bill 147. HARP inspects our X-ray machines and I have a licence from the College of Physicians and Surgeons of Ontario. I welcome regulations and standards to protect the patient, but these can be administered by the above groups which already exist.

I moved from New Brunswick to Ontario in order to have a private practice radiology clinic, since these clinics do not exist in New Brunswick. Before moving to Ontario, I worked at the Moncton City Hospital, which is a 500-bed acute care facility. It was very difficult to obtain new equipment and just as difficult to get operating funds, similar to the present situation with CAT and magnetic resonance imaging in Ontario. Bill 147 will make general X-ray, ultrasound, mammography, etc, equally inaccessible. We already have a working model of Bill 147 with CAT and MR, which has resulted in a limited service to the patient and a long waiting list. Toronto has one MR compared to 50 for similar population bases in the United States.

In New Brunswick, it was difficult to hire additional staff and the need was quite obvious. We would have to go through several committees and compete with other departments for funding. Now, in private practice staffing changes can be made quickly in response to patient load.

I would like to add that our group does not self-refer. All tests are requested by other physicians who function totally independently. If there is an increased demand for our service, it is generated by the patient and his or her physician. These services will still be required even if private clinics no longer exist.

The third is I would like to know why the Ontario Hospital Association is so in favour of Bill 147. The private clinics are known to be more efficient and do the same examinations at less cost than the OHA facilities. The OHA may say that its patients are more difficult to examine, and this is partly true, but another reason is the increased administration cost. For example, in New Brunswick the information required by the administration was exhaustive. This information included: (a) what time the patient arrived in our department, (b) the mode of arrival, ie, did the patient walk, come by wheelchair or on a stretcher, (c) which room the examination was performed in, (d) who performed the examination, (e) how many films were taken and (f) what size films, etc.

Then, when I obtained the films for interpretation, the most important piece of information was often not available; that is, why did the patient have the examination in the first place?

Presently, I have much less bureaucracy in private practice and until I heard of Bill 147 was pleased with my move from New Brunswick. Will the bureaucratic frustrations resume with Bill 147? Will Bill 147 destroy the motivation and competition generated by private practice?

In summary, I feel Bill 147 will increase the cost of health care. It is going to cost dollars to hire these new directors and staff and it is going to create another bottleneck in health care delivery in this province.

Mr Reville: Thank you for coming today, Doctor. I have had a chance to visit Moncton City Hospital. Can you tell me why there are not any private radiology clinics in New Brunswick? Is it prevented by law, is it prohibited?

Dr McKenzie: There is no funding in existence. There is no T component and it is illegal to extra-bill. So you would have to operate the private clinics by using fees.

Mr Reville: Only under professional fees.

Dr McKenzie: So why would you invest all this money in equipment and facilities when you could go to the hospital?

Mr Reville: You would not.

Dr McKenzie: There is a shortage of radiologists down in New Brunswick.

Mr Reville: Do you work by yourself or do you have other colleagues who work with you?

Dr McKenzie: There are three radiologists. All of us are full-time, private radiologists.

Mr Reville: If this legislation were to pass, this amendment, would you apply for a licence or would you just leave the business?

Dr McKenzie: I am in a particularly difficult bind. I have mortgaged my house on this goodwill component, which no longer exists, and we have a large sum of money already committed in leased equipment. So I really have not decided what I am going to do yet.

Mr Reville: Have you had any discussions with your association about the kind of funding difficulties you are in or the kind of requirements you would have in terms of a negotiation with the government around funding?

Dr McKenzie: Yes, I have attended meetings that were called by the association of radiologists and participated in these meetings.

Mr Reville: There were, just for your information, a number of presentations in the

first round of these hearings by entrepreneurs who were either currently involved in something like an independent health facility or were interested in being involved, and most of them thought that they would be able to amortize their equipment over five years. Have you received information to the contrary from the suppliers of such—

Dr McKenzie: As I said before, I really have not looked in any depth at refinancing the equipment or refinancing the practice. So far I have just been sort of, I guess, mostly panic-stricken as to how this can change overnight. I feel like I just lost the firm with one stroke of a possible pen from the Legislature.

Mr Reville: That somebody with a very tall black hat showed up.

Dr McKenzie: Yes.

Interjection: You showed up.

Mr Reville: I do not have a hat.

The Chair: Are your questions complete, Mr Reville?

Mr Reville: Yes, I am just thinking of getting a hat.

The Chair: I see. Okay, Mr Keyes, while he is looking for his hat.

Mr Keyes: A follow-up to his question: I wonder if the doctor would be kind enough not to give us the dollars and cents, but you seem to highlight that your investment was a large part to the goodwill component of the facility. I wonder if you could give me any idea of the percentage of your investment that you figure was just the goodwill and not the physical amenities that you bought, whether it is the building or lease or whatever and the equipment.

Dr McKenzie: I would love to provide this figure, but I cannot. It is like a share, I guess, on the common market; it is only worth what you can get for it. I have no idea what I could get for used radiology equipment.

Mr Keyes: No, what is the percentage of what you invested? Your opening line was, "I have recently invested a large sum in the goodwill

component of a 20-year-old private practice." What percentage of your investment was in that goodwill component?

Dr McKenzie: It was a total package, a total investment. There was no breakdown as to what percentage was goodwill and what percentage was the typewriter and what percentage was the X-ray equipment. It was not broken down that way. I really have no reliable figures.

Mr Keyes: I am partly challenging you that perhaps there might—is it not at all possible that a bigger percentage of it was for the actual equipment, etc., than goodwill? You have given an indication that the majority of it was goodwill. I just want to raise the spectrum that perhaps goodwill is not as large a percentage of the investment therein. Again, this bill attempts to not get rid of goodwill, but to not put a monetary value on "the licence" of a facility. We have seen what has happened in other businesses in this city in particular when you create such a dollar value in licences; I am thinking of the taxi business.

Mr Grandmaitre: Are you the only private clinic in Kitchener?

Dr McKenzie: No, we compete with several other private clinics.

Mr Grandmaitre: Are they owned by doctors too?

Dr McKenzie: Some are and some are not. Some clinics are operated by MDS Laboratories and some clinics are operated by other private radiologists full-time. So there would be a mixture.

The Chair: Are there any further questions from any members of the committee? Thank you very much, Dr McKenzie.

Dr McKenzie: Thank you for the opportunity.

The Chair: This committee will adjourn until 3:30 tomorrow afternoon. I would just remind you that there will be nobody else meeting in this room. If you would like to leave your documents, they will be considered safe.

The committee adjourned at 1755.

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Witnesses:

From the Ministry of Health:

MacMillan, Dr Robert M., Executive Director, Health Insurance Division

Sharpe, Gilbert, Director, Legal Services Branch

Individual Presentations:

Taucer, Dr Fabiano A. S.

Stronell, Dr R. D.

From Bloor-Bathurst X-Ray and Ultrasound:

Joshi, Pramod, X-Ray Technician

Individual Presentation:

Gervais, Dr Charles

From the Queensway General Hospital:

Miller, Dr Murray H., Department of Diagnostic Imaging

Marriott, Dr Anne E., Department of Diagnostic Imaging

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Gershater, Dr R., Chief, Department of Diagnostic Imaging

From the Norfolk General Hospital:

Pringle, Barbara, Chairman, Board of Directors

Shantz, Harold, Executive Director

Individual Presentation:

McKenzie, Dr Ernest





No. S-3

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development
Independent Health Facilities Act, 1989

Second Session, 34th Parliament
Tuesday 31 October 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, 31 October, 1989

The committee met at 1532 in room 151.

INDEPENDENT HEALTH FACILITIES ACT, 1989 (continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chair: I would like to call the meeting of the standing committee on social development and its hearings regarding the grandfathering of independent health facilities under Bill 147, column T, regulation 452, to order, please.

Our first presenter this afternoon is the Ontario Association of Radiologists. This being an association, it will be presenting for 30 minutes. We hope you will provide us with some time for questioning, Dr Richardson and Dr Bechai. You may begin.

ONTARIO ASSOCIATION OF RADIOLOGISTS

Dr Richardson: I am Dr Tim Richardson and beside me is Dr Nabil Bechai. We are both hospital-based radiologists and do not own private practices. We are on the executive and represent the views of the Ontario Association of Radiologists. Our organization, chartered in and active since 1949, consists of professional radiologists only. It includes radiologists involved in hospital and private practice, academic and nonacademic or any combination of these. Our members provide the day-to-day radiological services that will be so affected if the proposed David Reville amendment to Bill 147 is passed.

We were dismayed at the lack, and indeed the complete absence, of input we were given into the discussions surrounding the bill initially introduced in June 1988. We had been told by Gilbert Sharpe in July 1988 and again by the ministry as late as August 1989 that radiological offices were specifically not included in the Independent Health Facilities Act.

On reviewing and studying the bill, it has become very apparent to us that the legislation, specifically designed to capture about 20 outpatient surgical facilities, would not be applicable to the more-than-600 diagnostic radiology and ultrasound offices suddenly swept into the net. We have difficulty understanding the ration-

ale for including our radiology offices in this particular act.

It seems to me that the original intent of the act was to regulate and control new outpatient facilities, which were being taken out of the jurisdiction of the hospitals and hence the regulations of these institutions. It is reasonable and responsible that government should want to control these new outpatient facilities to ensure maximum professional standards and public safety.

In contrast, the majority of the large number of radiology, nuclear medicine and ultrasound offices about to be encompassed by the act are already established and, as we will point out below, controlled by existing legislation. Therefore, we believe that the practice of radiology does not belong to the act and this is the reason for our submission today.

We are grateful that this opportunity has now been granted us. We believe a co-operative approach combining experienced professional radiologists and legislators is the appropriate path to take in an effort to maximize the benefits from health care dollars while at the same time maintaining the highest possible standards of care.

In our presentation, we will inform you of some of our reservations concerning the amendment to the bill as it applies to our specialty and at the same time offer constructive suggestions indicating our intent and willingness to co-operate with you in addressing concerns of the government.

Our brief, therefore, will consist of two parts. The first will consist of our reservations that the proposed act would have as it applies to the accessibility of our radiological services, the issue of quality assurance and the issue of licensing. The second part will consist of our proposal, already suggested to the minister and the deputy minister on 17 October 1989, which we believe would achieve the goals of good accessibility to and the high quality of radiological services without increasing costs. We believe that these goals can be achieved with the help of the radiologists and not despite them.

Before we begin about our reservations, let me describe to you the job of the professional radiologist in his or her role of delivering modern

imaging services. All certified radiologists are physicians specialized in imaging modalities, including X-rays, computerized axial tomography scanning, ultrasound, nuclear medicine and magnetic resonance imaging.

We perform these tests at the request of other physicians. We do not self-refer. No matter how many radiology offices are available, whether they be in or out of hospital, the number of tests will be dependent upon physicians ordering them, not on the radiologists performing them. We do not advertise but rely on our professional reputation, as well as our reliability and accessibility, to maintain our patterns of referral from doctors.

Our role is a crucial link in the chain of health care delivery. In diagnostic and therapeutic terms, we are in many ways the hub of a wheel. Trained and examined in both medicine and all modern imaging modalities, we are able to use our training not only to carry out and interpret imaging examinations, but also to decide which out of the many available new and old tests is the most effective and efficient way to arrive at a diagnosis. In this way, co-operation with radiologists is essential in order to maximize the radiological service that we have and to expedite the rapid diagnosis and early treatment of disease.

If there is inappropriate utilization, we are against it as this is clearly not in the interest of the public or the cost-conscious government. Instead, we want to work with government to attain our mutual goals.

First our reservations: Our concerns centre upon the effects of the new legislation on: (1) the accessibility to radiological services, (2) the quality assurance of these services and (3) licensing.

First, accessibility: We believe accessibility to our services will be reduced because of the effect the legislation will have on both radiology offices and hospitals' departments of radiology. Fifty per cent of outpatient imaging is now done in out-of-hospital offices. An increased level of bureaucracy as suggested in the tendering process for licences, negotiating facility fees for licences every one to five years and negotiating the conditions of the licence, including a variety of different circumstances in each office, will become a hindrance to the ability of our offices to function.

We predict that many will close. We predict that the financial and operational uncertainties caused by having a maximum five-year length of the licence will not be conducive to running our

clinics. It is difficult to plan, finance and operate these offices, which require expensive equipment and highly trained staff, when the maximum duration of a licence is five years or as little as one month. This is inconsistent with the Canadian Hospital Accounting Manual, which accepts that the depreciation of major radiological equipment in hospitals should be done over 15 years.

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There are uncertainties in financing and staffing raised by renewable five-year or shorter licensing. As a result, attempts to maintain high-quality equipment and staff will be difficult. Staff will be hard to attract, whether they be from a hospital department or a technologist training institute. Therefore, high-quality images will be difficult, if not impossible, to obtain. Offices will close and patients will be in waiting lines at the hospitals even longer than they are now.

The hospitals, therefore, are our second area of concern when it comes to accessibility. We believe that hospitals have not demonstrated their ability to adequately function in similar situations where only the professional and not the technical fee has been in the schedule of benefits. CAT and MR scanning are examples of this.

In my hospital, where CAT scanning has been available for 18 months, we already have a waiting list of 10 weeks. A recent document from the district health council committee stated that we have one quarter of the number of MR scanners per capita that are available in Italy. San Francisco and its surrounding area, with a similar population base to Toronto's, had 55 MR scanners at last count; we have one.

I am not trying to use this as a forum for asking for more CAT scanners but rather to illustrate the case of what happens without the T component. Hospital bureaucracy simply does not allow for the rapid, efficient availability of radiological services. Lack of the T component in the hospital will have a negative impact. The extra income now generated by the T fee for the otherwise globally funded hospital eventually comes, at least partially, back to our X-ray departments. This in turn enables equipment to be updated, which in turn promotes the quality of care for both inpatients and outpatients.

We would not like to see the same accessibility problems occur to simple radiology services as are presently being experienced in cardiac surgery and cancer therapy. The demand for imaging services in hospitals is already at a premium and this is one of the reasons that many

patients and referring physicians prefer not to use them.

Being a hospital radiologist, I believe we will not be able to handle the projected increased workload, as we are already overcrowded with no room for expansion. The original intent of the Independent Health Facilities Act was to push outpatient work out of the hospital. In reality, we believe it will do just the opposite; that is, push the imaging work back to the hospitals. They will not be able to cope with the increased load, as I have described.

The second area of concern we have is with the quality assurance of imaging services. In imaging, the quality of the examination is ultimately determined by the ability to accurately arrive at a diagnosis. This is determined by the ability of the radiologist to interpret the examination and by the technologist and equipment used to acquire that image.

First, the radiologist: All radiologists are physicians and all are certified by the Royal College of Physicians and Surgeons of Canada. Our section of the Ontario Medical Association has already had major input with the college into developing a peer review program, which is mandatory for us, with the intent of maintaining professional standards. Private practices have already been surveyed and the program is now beginning.

The second aspect of quality assurance lies in technologists and equipment. The Healing Arts Radiation Protection Act of Ontario, legislated in 1980, deals with this aspect of quality control. The committee associated with the HARP Act is an ongoing one, consisting of physicists and radiologists constantly revising the legislation.

Section 4 of HARP requires that all X-ray machines, the locations of these machines and the names and business addresses of owners of the machines have to be registered with the Minister of Health's director of X-ray safety. Section 9 of that same act requires that each radiologist's office have a radiation protection officer who, in turn, must, among other things, be a legally qualified medical practitioner.

As such, we the radiation protection officers come under the legislation and policing of the college, as outlined above. Strict quality control must be maintained and monitored, as outlined in section 7 of Ontario regulation 45/84 of the HARP Act, and equipment must comply with the federal Radiation Emitting Devices Act. We have attached a copy of these standards to our brief in the appendix under table 5.

By section 20 of the HARP Act, inspectors appointed by the minister may and do come in at "all reasonable times" to examine our equipment. By subsection 4 of the same regulation, our technologists must be recognized by the Board of Radiological Technicians.

To reiterate, we are prepared to co-operate with responsible bodies to enhance quality assurance and the mandatory peer review program already in place, ensuring that professional standards are maintained.

The third area of concern we have pertains to licensing. As previously stated, each radiologist is not only a medical practitioner but a specialist. We have studied an average of 12 to 13 years since secondary school. We are licensed by the College of Physicians and Surgeons of Ontario to practise medicine and we are certified by the Royal College of Physicians and Surgeons of Canada to practise our specialty: radiology. We do not believe that we should obtain yet another licence so that we can practise radiology in our offices.

I would be remiss if I did not mention the injustice that my colleagues feel will occur to their major lifetime professional and financial investments. The ease with which such legislation might become law is a source of great concern to our members.

The second part of our brief today is a more positive one. We believe that in order to offer continued high-quality radiological services to the people of Ontario, while at the same time maintaining accessibility and controlling costs, we need a well-integrated plan. In fact, we have what we call the eight-point plan.

It is clear to us that cost-effectiveness is what the ministry is looking for and therefore we propose as our first point of the plan to establish a utilization review and management committee. In our opinion, this would include representatives from the ministry and/or OHIP, a representative from the Ontario Hospital Association, a radiologist from the OMA or the Ontario Association of Radiologists and then any other persons deemed appropriate to be on the committee.

This utilization committee should be formed immediately. A definite time frame for the preliminary report should be established as to how to deal with the utilization issues in the practice of radiology. This committee should be an ongoing one so that there will be continuous improvement and monitoring in our specialty, which is such a rapidly developing and changing one.

The first task of this committee should be to gather data that is relevant to the practice of radiology and then to develop a utilization management plan and recommend methods of implementing them. The committee should continue to monitor this data with the implementation of new programs. We suggest to you that the input of a professional radiologist would be extremely valuable in both the initial analysis and ongoing monitoring of utilization issues.

The second point of the plan is that we should maintain or enhance quality assurance and peer review mechanisms that are acceptable to bodies responsible for maintaining professional and technical standards outside the ambit of this legislation. As we have already mentioned, all radiologists are in favour of this.

The third point is to restrict the practice of imaging to qualified specialists. Physicians are ultimately responsible for the whole operation in our radiology offices. This will improve quality and save money that is now being channelled to nonphysician investors setting up offices and hiring physicians to work for them.

The fourth point of the plan is to establish a fee differential in ultrasound so that the reporting physician receives a smaller fee if he or she is not actually present or immediately available to appropriately consult on the examination while it is in progress. This would be similar to the differential that exists in nuclear medicine now. This will also improve quality and save money.

The fifth point of the plan is to discourage nonspecialists from doing what specialists are trained to do. This could be achieved by establishing a differential tariff such that noncertified physicians are paid only a percentage of what certified physicians are, whether they be radiologists or other properly trained physicians. Of course there are exceptions to this and a detailed study of what is important regarding this issue could be conducted by the utilization committee.

The sixth point of the plan is to have the utilization committee look into the issue of self-referral. Radiologists do not self-refer. We know that physicians own certain imaging equipment and at times it would be difficult to sort out what is appropriate and what is inappropriate self-referral. The utilization committee would look into this issue of self-referrals and give a guideline pertaining to them.

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The seventh point of the plan has to do with the suggestion of grandfathering of the existing radiology clinics. While we support grand-

fathering of existing quality clinics, we also believe that newly graduated radiologists should be able to have access both to private practice and hospital-based practice. The utilization committee should address this issue.

The eighth point of the plan is education on these utilization issues. This may be the most important part of all. To repeat, we perform the examinations on patients referred to us and may have little control over the doctor ordering the examination. While sometimes consulted by the referring physician, it is often hard for us to determine just what the appropriate examination is, as we do not have the intimate clinical knowledge that the referring doctor does.

Therefore, the newly established utilization committee should look at educating other physicians about the costs and appropriateness of, and changes in imaging procedures, in an effort to improve the utilization of imaging resources. This would be a long process and should involve not only practising physicians but also medical students about ready to graduate and use imaging resources.

In summary, the Ontario Association of Radiologists believes that the private radiology offices do not belong to Bill 147 as it was originally conceived. Furthermore, we are sure that our co-operation in establishing a utilization review and management program is essential for quality health care while maintaining accessibility and controlling costs.

The Chair: Thank you, Dr Richardson. I am sorry, Dr Bechai, that I did not pronounce your name correctly the first time.

Mr Eves: I have a couple of questions of the delegation and also perhaps a couple of the ministry, if time permits. I do not know how you want to handle that. Maybe you want to go on to the second questioner first.

The Chair: I also have Mrs Stoner. I really am going to ask you again to be co-operative, as you were yesterday. If we give extra time to the first presenter, then we are going to have difficulty and some people will not be able to present at all, so try to get it in within seven minutes, if you can.

Mr Eves: My couple of questions of the delegation are very simply this. We heard from the ministry yesterday, in fact, in a statement it introduced at the outset and a slide presentation on page 3, some of its concerns. As a matter of fact, the last sentence at the end of the first paragraph on page 3 says, "Hospitals have a very extensive quality assurance process and this process has not been moved to the community facilities." I would ask you to comment, I guess,

on the ministry's concern about an extensive quality assurance process. How do you react to that criticism? I guess that is the way I would put it.

Dr Richardson: As I have stated before, I break down the quality assurance into two parts when it comes to our practice. One is with the radiologist himself and the other is with the equipment and the technologist he uses for doing the work in his office. The HARP commission pertains both to office practice and hospital practice. It is the same act and governs the same. We do the same quality control in the hospital as we do in the office. Obviously, in the hospital we have more machinery; we have more CAT scanners, and magnetic resonance imagers, which are not in the office, so that is separate. So I believe it is indeed the same legislation for both the hospital and the office.

When it comes to control of the radiologist, the radiologist is licensed by the college. He comes under the same regulations, whether he is working in the hospital or the office. We are the radiation patrol officer and are ultimately responsible for what is done in that office.

I would be happy to review his concerns when time permits.

Mr Eves: I believe we heard from Mr Sharpe yesterday. I do not see him here today, but I believe it was he who stated yesterday that in his opinion, HARP offered no protection for the patient and that it was strictly limited to the assurance of the quality of the equipment. That is why the government found it necessary to support bringing in clinics under Bill 147. I just would like you to comment on that. Do you disagree with the statements about different quality assurance processes for hospitals and private clinics, and do you agree that there is not such quality assurance now as it affects patients especially?

Dr Bechai: Maybe I can come into the discussion here. I think the bottom line is very simple. Whether in offices or in hospitals, we are willing to co-operate with any quality assurance program that is reasonable. Whether that is in place today or not, we are willing to co-operate. We can sit down and talk about it. The big problem we have with this act is not the quality issue; the problem we have is with other parts of the act.

In terms of peer reviews, they are just starting. Whether in hospital, where other mechanisms of peer review are present, or whether in the outside practice, they are mandatory. I may want to correct Dr MacMillan about the fact that it is

mandatory, not voluntary. The peer review happens in the private practice. It is just about to start and the college will probably amplify this when its time comes.

The other thing is that HARP is the same, whether in hospital or outside the hospital. There is no difference.

Mrs Stoner: First of all, I would like to go back to the beginning of your presentation, where you refer to the history of the radiologists' involvement with Bill 147. I underline that clearly I was not here on the committee, but as I understand it, the Reville amendment was a surprise to everybody but perhaps Mr Reville.

Mr Reville: It surprised me too.

Mrs Stoner: It did, did it? Oh, dear.

Anyhow, having said that, it was then agreed that you had not been consulted and in fact had been told that you were not to be involved. That is the reason these hearings have been reopened and we are here today, to give you the opportunity to have the input you need. I also believe the minister herself met with your association.

Dr Richardson: Yes.

Mrs Stoner: So there has been some discussion and acknowledgement of the points.

Dr Richardson: And we thank you for that.

Mrs Stoner: Continuing on with that, I also appreciate the spirit of co-operation that you brought to the meeting with the minister, as I understand it, and that you bring here today.

Her points on the need for quality are recognized, and I think they are recognized in your brief itself when you talk, for instance, about grandfathering quality facilities—you have emphasized the word—and clearly the need to meet the community's needs in accessibility; the eight points you have covered, particularly your recommendation of an ongoing dialogue of some sort, and you have a specific committee recommendation.

You did not recommend involvement of the Ontario Hospital Association in your group, and I question that. You are from the hospitals yourselves and do not have a private practice, as I understand it. My question is, why would they not be included in your list on page 9?

Dr Richardson: In fact, I did include them. Perhaps you were reading and not listening to me. I realized I had omitted that by mistake and added that.

Mrs Stoner: Oh, okay. I admit I was reading ahead.

I would assume that once Bill 147 is passed, and whatever its final form is, there will be continuing dialogue. Some of your points, particularly numbers 4, 6 and the latter part of 8, strike me particularly. Obviously they are all worthy of dialogue, but those points strike me immediately. I congratulate you on a very well presented brief.

Dr Bechai: Can I add one thing to the point that was raised? I think if the amendment is included and Bill 147 is unchanged, it will hinder a lot of the possibility of real action for this utilization committee.

The Chair: Mr Eves, do you have a very short question?

Mr Eves: My question really was of the ministry. I would like to ask Dr MacMillan, I suppose. If he has not seen the brief before today, it might be a little unfair, but perhaps he can undertake to get us an answer later as to what the ministry thinks of the association's eight-point plan.

1600

The Chair: Do you want to speak now, Dr MacMillan, or do you want to wait?

Dr MacMillan: I would say that on first blush, because I have just seen it, it is very meritorious. I think many of those things can be done with or without the amendment.

The Chair: Thank you very much, both of you. Your brief has certainly led us to do some more thinking.

Mr Reville: Madam Chair, on a point of order.

The Chair: Yes, Mr Reville, did you request a question?

Mr Reville: No, I did not. That is why I am pursuing a point of order.

The Chair: Okay, fine.

Mr Reville: I have actually a request to make of Dr MacMillan, and I am wondering at what point in the proceedings it would be appropriate to make that request.

The Chair: How long is that going to take?

Mr Reville: It would be very quick.

The Chair: Please do that now.

Mr Reville: Dr MacMillan and the committee will remember that yesterday we had a presentation from Dr Miller and Dr Marriott, both of whom referred to what they thought was increased utilization in respect of women's health. I am wondering if it would be possible for the ministry to take a look over a few-year period

at mammography and obstetrical, pelvic and transvaginal ultrasound—intracavity ultrasound is how it is referred to in the schedule. If you looked at codes X184 through X187 and J159, J162, J163, J138, I think you would capture those procedures, and that information might be of interest to the committee. We would be able to determine whether, as those two doctors feel, some of the increase is related to greater utilization in respect of women's health. I would be fascinated to know that information as well.

The Chair: Is that data available, Dr MacMillan, do you feel?

Dr MacMillan: I will determine that—

Mr Reville: It could probably be run by code, but I do not know how easy that is. It will be sorting out from among millions of procedures, and that is the problem.

Dr MacMillan: I will do my best to have it for next week's hearings.

The Chair: Thank you, Mr Reville.

The Hamilton Academy of Medicine, public relations committee, Dr Lorne Finkelstein, please. We have been presented with this brief previous to today's presentation. Please proceed.

HAMILTON ACADEMY OF MEDICINE

Dr Finkelstein: Thank you very much. On behalf of the Hamilton Academy of Medicine, I would like to thank you for reopening the hearings to study the amendment to Bill 147 that deals with health facilities charging technical components, along with professional components, for services rendered.

When Bill 147 was introduced in June 1988, the intent of this bill was to encourage the development of out-of-hospital facilities to provide services where possible, thus relieving the hospital of costly services. This bill would regulate and license such facilities. Many doctors express concern that this bill would be used to license existing doctors' offices and clinics, thereby controlling the numbers of doctors who could practise in this province.

The Health minister reassured our profession that this was not the intent, referring to the preamble to this bill, which was to have been proof of that. Section 2 states, "This act does not apply to the following health facilities, places or services" and it lists in clause 2, "an office or place in which one or more persons provide services in the course of the practice of a health profession....the only charges made for the insured services are for amounts paid or payable by the plan"—meaning OHIP—"as defined in the

Health Insurance Act" and "no facility fee is requested."

Unfortunately, the amendment introduced by the New Democratic Party Health critic on 29 August 1989 contradicts this very intent and has confirmed doctors' fears about this bill. It is very clear that according to this amendment, existing health facilities will certainly be affected by this bill.

When you read the OHIP fee schedule thoroughly, you will discover how many types of practices would be affected by this amendment. Under the agreement between government and the Ontario Medical Association, the fee schedule has been structured to allow for many services to be billed under so-called T and P components. The T component, or technical component, is to pay for the cost of purchasing diagnostic machinery, the cost of running such equipment, the cost of space needed to house such machines and the services of technicians hired to run the tests involved. The P component, or professional component, is to reimburse the physician for his knowledge and skill in interpreting and reporting these various tests.

The T component, as listed in the OHIP schedule, appears in vertical columns, and if you look at the pages in the schedule, there are vertical columns for services in diagnostic radiology, diagnostic ultrasound, nuclear medicine and pulmonary function assessment. The T component also appears in horizontal rows. That was not really affected by this amendment, but there are many services that provide T billings, including ophthalmology, ear-nose-throat, physical medicine, neurology, sleep studies and cardiology. Even a simple electrocardiogram that can be performed in the offices of a cardiologist, internist or family physician is billed with such a division into T and P components.

According to the amendment introduced by Mr Reville, any such facility charging T components, especially those listed under vertical columns in the fee schedule, would be required to apply to the Minister of Health for a licence to operate its practices as a newly designated independent health care facility. If granted such a licence, they would charge some form of facility fee instead of a T component. If a licence was refused, the affected offices or clinics would not be able to charge a facility fee, nor would the T component be allowed any longer. Clearly, the component of the fee that helps pay for the overhead of running such diagnostic equipment would be eliminated.

We believe that when this amendment was introduced, the far-reaching effects of this were not understood by the committee. This amendment, if allowed to continue unchallenged, would force all the affected physicians to apply for a licence to continue their practices.

The amendment did offer a grandfathering clause for offices in existence prior to the passage of Bill 147. However, this would be in effect for only one year after passage, forcing all these affected offices to apply to the Minister of Health for a facility licence during that year. This certainly would create chaos for the bureaucracy, trying to review the many hundreds of applicants who would be affected. This could force many offices to reduce their services, since it would no longer be possible to pay for the equipment, upkeep and staff required to run such facilities. We really do not believe that this was the intent of the committee when this amendment was introduced.

We understand why the Ontario Hospital Association would support such an amendment, as it did at the time. Hospitals are under great pressure to operate within very strict budget guidelines. Patients and doctors in Ontario are now experiencing the longest delays ever in obtaining diagnostic and treatment services in our hospitals. The hospital diagnostic services serve inpatients as a priority, which is appropriate. These services, though, are paid out of global budgets for the hospitals. The hospital is able to charge OHIP for services rendered to outpatients, but because of the increasing delays in obtaining hospital diagnostic services for outpatients, offices within the communities have successfully filled the void by providing such quick and efficient testing. The success of such facilities proves the need for out-of-hospital diagnostic facilities, but their success has deprived the hospitals of income from services provided for outpatients.

It is because of this loss of revenue that the OHA would like to see these services returned to the hospitals. The Ontario Hospital Association would encourage this amendment in the hope that many such facilities would not receive licences and would be forced to close, which would return outpatients to hospitals for services. But hospitals can now barely keep up with the present demand. Delays for patients would increase further. This negates the whole principle of Bill 147, which is to encourage appropriate services to be performed outside the hospital.

We have been told that the purpose of this amendment was to help reduce abuses by certain

physicians, especially those who provide diagnostic services, particularly a small number of radiologists. Most physicians pride themselves on being able to provide excellent care for their patients. We are no happier when we hear of members of our profession deviating from appropriate, ethical practices than are politicians when some of their profession do not follow their guidelines for ethical behaviour, but to encompass a whole profession for the wrongs of a small number of individuals is inappropriate, whether we talk about doctors or politicians.

We of the Hamilton Academy of Medicine contend that measures should be taken against members of our profession who abuse the system. Government should work together with the Ontario Medical Association and the College of Physicians and Surgeons of Ontario to prevent such abuses from occurring. However, it is important that the OMA is informed of these exact cases of such abuse.

There is a mechanism in place now whereby the Ministry of Health is aware of excessive billing patterns by certain physicians, and the ministry can direct the college to investigate these physicians. There is absolutely no need for any form of new legislation, such as this amendment, that affects so many of the medical profession needlessly.

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We would like to remind this committee that the intent of Bill 147 is to encourage the use of out-of-hospital services. This intent would be negated by Mr Reville's amendment. It also does seem odd that Mr Reville would bother to introduce such an amendment, which several of his own party members have admitted is "too loose," especially when he wrote in another document, entitled, *Are We Headed for Health Care Privatization*, in September 1989, that, "I will be voting against Bill 147."

We do not believe that any such amendment is necessary to Bill 147. Existing regulations should be followed to identify those physicians whose practices are causing the government concern. Please remember that the appendix to the Premier's Council on Health Strategy stated that, "What seems to be important is to allow consumers to have choice over how they will receive services." Would you rather wait weeks or months for your services, if out-patient diagnostic facilities are closed because of Bill 147?

To summarize:

1. This amendment will reduce the availability of services by radiologists, specialists in diag-

nostic ultrasound, nuclear medicine and respiratory.

2. Services by other fields of medicine could be adversely affected as well, including cardiology, neurology, ophthalmology, ear, nose and throat, physical medicine and family medicine.

3. There would be a massive increase in the cost of the bureaucracy to examine all the applicants who required licences.

4. The intent of the bill, to provide greater out-of-hospital facilities, would be contradicted because many of these affected medical specialties would not continue to operate;

(5) Patient delays would be greatly increased.

Please remember the words of Dr Robert MacMillan, executive director of the health insurance division, Ministry of Health, who stated at your committee hearings concerning Bill 147, on 29 August 1989: "This is one of the most potentially explosive or controversial amendments that anybody is proposing....it is not a move that you would want to make lightly, without a lot of assessment and discussion."

Thank you for allowing me to speak to you today.

The Chair: Thank you very much, Dr Finkelstein. We have time for one short question. Mr Eves has asked to place that question.

Mr Eves: I guess my question would not be to the doctor, but would be to Dr MacMillan. We have heard some delegations yesterday, and again this afternoon, indicate that, in their view—at least this is what I think I am hearing; if I am not hearing this, I wish somebody would correct me—they think there is the same quality assurance process under the same pieces of legislation or through the college, through peer review, whether you are in a private clinic or whether you are in a hospital setting, if you are a radiologist. Obviously the ministry's statement, which was read yesterday, does not say that. It says that they have a very extensive quality assurance process and this process has not been moved to the community facilities.

I guess I keep on coming back to the question I asked at the outset yesterday. Is Bill 147 the appropriate mechanism to assure quality assurance and how do you account for this disagreement between radiologists and what the ministry's position is?

The Chair: Dr Finkelstein, is this okay, that your time is being taken by this question to the ministry?

Dr Finkelstein: Yes.

The Chair: Thank you.

Dr MacMillan: Bill 147 and this amendment would be one way to address the issue of quality assurance in radiography clinics and, for that matter, ultrasound and other diagnostic services. But there are other ways to achieve it, one of which was the eight-point plan, if it were successful and if it were mandatory.

As for the answers that have been given about the quality side, they have not been very complete, in my view. Hospitals are well known to have quality assessment teams, tissue and audit committees, many peer assessment programs, accreditation to the Canadian Council on Health Facilities Accreditation, none of which occurs in the private sector, as far as I know. What does occur is the HARP legislation, which looks after everything except for the conduct of physicians. Similar or analogous is the Nursing Homes Act, which looks after everything except for the conduct of the physician.

So the peer assessment of radiologists and their office practices is no worse or no better than of any other practitioner. But it is better and more assured—I am sorry, quality is not better; the quality assurance program is more thorough in hospitals than in any doctors' practices, whether they be radiologists or ultrasonographers or whatever.

The Chair: Thank you, Dr MacMillan. Thank you, Dr Finkelstein. Is the representative of Central Ultrasound, Gary Phillips, here? Please come forward. Please begin.

CENTRAL ULTRASOUND

Mr Phillips: My name is Gary Phillips and I represent a group of specialists registered with the college of physicians and surgeons. We operate a mobile ultrasound service. The following brief and presentation will endeavour to inform the committee of the advantages and benefits to the community of providing these mobile ultrasound services.

Three major areas will be discussed: (1) community-based mobile ultrasound, (2) quality assurance and control in mobile ultrasound and (3) cost-effectiveness of mobile services.

Under section I, community-based ultrasound: We provide mobile ultrasound service to clinics in general ultrasound, including pelvic, abdominal, obstetrics, thyroid, etc. As well, we perform echocardiography scans including echo-doppler and cardiovascular carotid-doppler studies. The last two services, including the doppler studies, are very often unavailable in some hospitals today. These procedures are done by expensive state-of-the-art equipment. For this reason, it is

often difficult and expensive for all hospitals to update with new specialized equipment.

From the patient point of view, we provide the diagnostic service at easily accessible and convenient locations and at times suited to the patient's needs. The referring physicians obtain an immediate technical impression and are able to make a diagnostic assessment immediately along with their clinical judgement. Hard-copy interpretation results are delivered within 24 to 48 hours through the mobile service.

Improved clinical assessment, with the appropriate treatment, has been greatly enhanced through this fast turnaround time. I personally have seen this method save a life directly. For example, one of the clinics had a waiting period of up to three weeks for an echocardiogram before our mobile service. This is both through the hospital and through outside clinics. We now provide echoes, plus doppler and carotid-doppler, for much improved cardiac and cardiovascular diagnosis with the turnaround time of 24 to 48 hours.

We have managed to be successful with the mobile service, due mainly to the need required by the community. In one instance, we have even delivered a patient with sight impairment to our mobile service. Indigent and elderly patients require easily accessible diagnostic services on an ambulatory basis; otherwise their health may deteriorate with subsequent admission to hospital in need of expensive critical care.

Remember that all our services are by referral only and we do experience more need where the diagnostic services are overstrained in hospitals with critical care patients and the waiting lists are long for ambulatory patients. We have had referring physicians ask us to service their clinics due to our good standing in the community we serve. Our total business has been built only on referrals.

In the next section, II, I will address quality assurance and controls in mobile ultrasound. Our ultrasound services are performed by qualified ultrasonographers registered and certified by exams through the American Registry of Diagnostic Medical Sonographers. The scans are read by qualified specialists registered with the college of physicians and surgeons. The report interpretations provided by these specialists are subject to peer review by providing reports to other specialists and hospitals on a regular basis.

Frequently, the original videotape of the scan is provided as well to confirm accurate interpretations. Our ultrasonographer is regularly updated on scanning techniques through hands-on

experience, with the specialists providing the interpretative reports. As well, continuing technical updates are provided through regularly held seminars.

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As an example of our quality assurance, many physicians we service have stated in several instances our mobile ultrasound has detected pathology previously missed. For additional quality control and recordkeeping, all hard-copy reports, written worksheets by the ultrasonographers and videotape scans are catalogued and stored. Tapes are not reused; however, they are stored for review at any time. These tapes are regularly requested by specialists in hospitals to review patient histories.

Section III, covering the cost-effectiveness of mobile services:

The objective of our service is to provide fast, efficient, reliable and quality service to the referring physicians. The only way we can provide this quality service is to be cost-effective. The state of the art of mobile equipment is at a portable stage in development, which allows us to serve the community in the most efficient manner possible. The equipment is moved from location to location on a daily basis, often serving two or three clinics in a day.

This means the cost of duplication of equipment is reduced, thereby saving the province and taxpayer money. Highly trained personnel, such as ultrasonographers, are used more efficiently at locations where services are required in the community. As stated earlier in this brief, the fast turnaround time and early, accurate diagnosis have allowed us to be competitive in the market and keep patients out of expensive critical care hospitals on a cost-efficient basis.

In summary, I hope I have explained and answered any questions regarding mobile ultrasound. I have shown how mobile ultrasound is a very necessary and important diagnostic service in today's community. If licensing is a requirement in the future, we suggest that mobile ultrasound be given consideration on a fair and equitable basis.

Mr Reville: I appreciated your description of a mobile ultrasound capability. Do I take it that if licensing were a requirement, you would intend to seek a licence?

Mr Phillips: Yes, sir.

Mr Reville: Would you be interested in telling the committee what kind of capital investment would be required to provide this kind of service? Is that something you can estimate?

Mr Phillips: Yes, because I know what my own investment is; it is approximately \$150,000. It depends on how many services you have going. Right now we have three pieces of equipment that can be used.

Mr Reville: Do you think it would be possible to amortize that kind of investment over five years?

Mr Phillips: I would believe so. That is my plan, to amortize it over five years.

Mr Reville: I do not know whether others have questions, but I have a question for the ministry.

The Chair: Yours is the only request I have at the present moment.

Mr Reville: Becoming ever more intimately familiar with the schedule of benefits, Dr MacMillan, I note that echocardiography, on page 70, is arranged in a fashion different from, say, ultrasound, where the T component does not appear in a column in the same way, but rather as a line item, and that there are three components in this category: two kinds of professional components and one technical component. In your view, does the so-called Reville amendment have any impact on those diagnostic and therapeutic procedures that are organized in a way like echocardiography is?

Dr MacMillan: It might be nice if it were. You name echocardiography in particular; one could make an argument that it is just as logical to have that captured as ultrasound or any of the other diagnostic facilities, but the very reading of your motion is such that those items that are not listed under a column, as compared with what Dr Finkelstein said, are not captured by this legislation.

Mr Reville: That is what I thought.

Dr MacMillan: Unless a change in the regulation occurred prior to proclamation in which they were put under a column.

Mr Reville: Right.

Dr MacMillan: That is the only way in which—

Mr Reville: There would have to be two changes. First, they would have to be put under a column and then they would have to be removed from the column again. It is kind of a two-step—however, some of the other stuff you do is the kind of thing that we are all talking about here. Some of the doppler tests seem to me to have a technical fee under that column. I was just curious. I began to sort of wander through this fee

schedule and discovered a difference in echocardiography. Thank you. That is all.

The Chair: Are there any further questions? Thank you very much, Mr Phillips.

We may continue then just a couple minutes early, if we have the presenters from the University of Toronto radiologists. You have received their brief as well.

There are three presenters here. It seems to be a relatively reasonably sized brief. Are you all going to participate or are you making yourselves available for questions?

Dr McCallum: I am Dr McCallum. If we may, we will read this brief and any questions the three of us will be happy to try and cope with.

The Chair: Thank you, Dr McCallum. Please begin.

UNIVERSITY OF TORONTO, DEPARTMENT OF RADIOLOGY

Dr McCallum: The radiologists in the University of Toronto hospitals are aware that the proposed bill is to contain costs of the health service and to increase the quality of care. We are in complete agreement with this concept and we will be happy to be part of a committee which would take part in governing this.

We are also aware that there are numerous nonradiologists owning private offices and premises who make a significant profit from the technical component. We agree that this must be controlled, which I think was one of the purposes of the amendment. In addition, we are aware that some radiologists reporting mainly ultrasound examinations, who are not present during the examination, make significant profit and agree that this requires a bit more control. In university hospitals, a radiologist is always present during examinations.

However, we feel that the removal of the T component is like using a sledgehammer instead of a scalpel to control the above areas of misuse of the present system. Academic radiologists in the University of Toronto hospitals wish to express concern and objection to the amendment which removes the T component from the OHIP payment. Our reasons for objections are as follows:

Radiology is presently a referral specialty and functions on demand from other physicians. Removal of the T component will not reduce the demand for radiological procedures.

Most private radiology offices are governed by radiologists who make very little profit from the T component in spite of a significant investment in equipment.

Removal of the T component in hospital practices would be absolutely disastrous, especially in university teaching hospitals where the T component contributes significantly to upgrading of equipment and purchase of state-of-the-art equipment, which is absolutely essential in tertiary care hospitals, all of which are university hospitals. Without state-of-the-art equipment, it is impossible to attract academic staff to the university hospital diagnostic imaging department.

To exemplify this, I have been looking for a neuroradiologist for four years. They are now in a position of insisting that departments to which they want to go to be neuroradiologists have to have magnetic resonance imaging. MRI is a big expense. There are lots available in the United States and very few available here. I filed an application to the government since November 1987 and have not yet had approval, although I think we are getting along that way now. But for me to get a neuroradiologist who is coming, hopefully, next July, I need to have magnetic resonance imaging.

University teaching hospital radiology departments are disadvantaged when compared to nonuniversity hospitals and private offices, since 10 per cent to 20 per cent of our fee is used for the support of teaching and research. No significant funds are available from the university or the government to support teaching and research. In addition, more difficult and complex cases are cared for in tertiary care hospitals. These patients require much more time for examination.

It is our opinion that university radiologists should be dedicated full-time to the hospital in which they work. This is often not possible because they are asked to do work outside the hospital, and as well as that, they take the opportunity to do it because they can then approach an income something similar to peripheral hospitals and private office radiologists.

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Outpatient radiology and the payment of the T component is important and essential for university radiology practice. This is so for the following reasons: The outpatient T component remunerates the hospital so that funds are available for equipment upgrade, employment of technical staff and secretarial and typing staff; outpatient radiology supplies many excellent cases for teaching radiology residents; and outpatient radiology is necessary for follow-up of previously seriously ill patients and continuity is necessary in these cases.

We are of the opinion that accessibility will be reduced. Private offices may well close if the T component is removed, simply because the increase in the expense of equipment, rent and technologists' income is likely to be so significant that it would not be a good idea to invest money in a private office any more.

We have no basic objection to licensing, but radiologist offices, in our opinion, would function at a minimum acceptable level until a licence was granted, rather than at a maximum acceptable level continually.

It is our opinion that no nonradiologists should be reading any X-ray films, and this includes general practitioners. The present situation is such that a GP reading X-ray films gets pretty much the same as we do. We have had four years of training in radiology and many of us have areas of special expertise, whereas nonradiologists reading X-rays—we frown on that. There is no quality assurance of equipment or technique or even film-reading.

Self-referrals, in our opinion, can be controlled by obliteration of any fee, but there must be a few exceptions to that, such as an obstetrician who really wants to do an ultrasound to see where the babe is before delivery.

I guess the HARP commission and the college of physicians and surgeons and the Ontario Medical Association already have a mechanism in place to assess quality assurance. Although I think this HARP commission is absolutely mandatory and not voluntary, I am not absolutely certain that the college has the power to be involved in this and I think we would be in a position to assess our own quality assurance. In fact, your section 7 of Bill 147 has precipitated the necessity for us to look at this more carefully and we can do it.

I had 10 years of experience in the United Kingdom in general practice. I want to tell you that the UK has now come full circle and is now encouraging private hospitals and private work and private medicine. I think Canada has probably one of the best medical systems in the world, and you cannot have tertiary care hospitals, where at the moment there are waiting lists for coronary artery care and for cancer treatment, without appreciating that tertiary care in university hospitals and the staff in those hospitals are absolutely essential to the system.

I make an appeal to the committee to understand that it is our opinion that university hospitals and academic radiology have not been looked on favourably in comparison with radiology in general and we think some extra

consideration should be given to university radiology departments and the university hospitals in general.

I would be happy to try to answer any questions.

Mr Reville: Thank you for your brief, doctor.

We have had a number of deputations that have already commented on the dearth of MR equipment in Canada. Yesterday the chief from North York General Hospital, department of diagnostic imaging, pointed out that we have less MR imaging capability than Cairo does. Today Dr—

Dr McCallum: Gershater, was it?

Mr Reville: That was Dr Gershater yesterday. Today it was Dr Anderson, was it, from the Ontario Association of Radiologists?

The Chair: Dr Richardson.

Mr Reville: Tim Richardson pointed out that San Francisco has 55, we have one; Italy has four times more per capita than we do. Because you are an expert in this field, can you give the committee any indication of the correlation between health status and the number of MRs per capita?

Dr McCallum: You mean, is the health care better in Italy than it is here? Is that what you are asking?

Mr Reville: I guess what I am trying to get at is that I think one of the difficulties anybody has when trying to assess how to allocate resources is, how much of a health care system's resources should go to diagnostic technology; how much to, say, health promotion; how much to treatment of trauma or disease? I have never heard anybody give a recipe and I wondered if you had comments in that regard.

Dr McCallum: Please.

Dr Wortzman: I am Dr Wortzman. I am chief of radiology at Mount Sinai Hospital. I have been on the task force committee of the district health council trying to figure out how many MRs there should be in Metro Toronto. We expanded our terms of reference and included the district health councils immediately adjacent to us, people up north in Orillia and out in Peterborough, and they all met.

To correct Dr Richardson's figures, there are 98 MR scanners in the San Francisco area; there are two in Toronto.

Mr Reville: Okay.

Dr Wortzman: Our task force met and we deliberated for a year and a half and we felt that to provide adequate health care immediately we

needed six more and we need another six more within the next year. That report is being tabled.

The government realizes there is a shortage and it will allow OHIP to pay for MRs done elsewhere. Patients go down continually to Buffalo and other places and have their scan and come back. That is not good care and it is not provision of good care. There is lack of continuity of care, they do not know the case and they do not have all the preliminary films.

Our thinking as to the number of MR units that should be done was based on our experience as neuroradiologists, primarily, but also in cardiac work and in musculoskeletal, which is the area it is chiefly used in. We think we could come up with an answer, and it should be at least one MR unit to every 300,000 patients. In neuroradiology, we feel that if we had enough MRs, we would probably stop using CAT. It is that significant an advance and has better diagnostic abilities.

Mr Reville: So that might overtake the lust of some hospitals for CAT scanners.

Dr Wortzman: If we have enough MRs. But in the province we have over 50 CATs right now; we only have five MRs.

Mr Reville: There are many hospital communities that are desirous of getting a CAT.

Dr McCallum: May I just add a bit? In the American experience, the MR replaces approximately 32 per cent of CATs.

Ms Poole: Dr McCallum, I just wanted clarification of one of the comments in your brief. It states: "Outpatient radiology and the payment of the T component is important and essential for university radiology practice. This is so for the following reasons." One of the reasons stated is, "The outpatient T component remunerates the hospital so that funds are available for equipment upgrade, employment of technical staff and secretarial and typing staff."

I had a meeting with a radiologist constituent who worked in a hospital. He met with me last week to express some concerns about the provisions in the bill and to discuss it, and one of the objections he raised about current hospital practice is that the T fee component would go directly to the hospital's global budget and there would be no provision that the hospital would actually have to spend it on radiology equipment or anything in the radiology department whatsoever. I just wondered, am I off base with that comment or is that generally the—

Dr McCallum: No, you are not off base with that comment, that is absolutely true, but then, if you are running a department of diagnostic

imaging, you have to have some kind of relationship with administration, and in particular the finance officer, so that when equipment is necessary, the money is available. One assumes—I assume—that the money which I get is contributed to by the T component.

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Ms Poole: So you do not see this as a problem, you think most hospitals do actually put a reserve fund aside.

Dr McCallum: No, they do not. They do not put a reserve fund aside, but one still has to get state-of-the-art equipment in tertiary care hospitals. That has to come from some part of the budget and it is a fair assumption that some of that is contributed to by the T component.

Dr Ho: I am Dr Ho from Toronto General Hospital. I would just like to clarify the point that you raised. It is quite true that funds are not set aside by the hospital to buy new equipment. However, if you have a good business plan that you can propose, for instance, if you get this equipment, the T component will generate X dollars and it will pay for itself in five years, then the hospital will look at it very favourably and acquire that equipment. If the T component were removed and we do not have a business plan that we can propose, then it will be competing with other capital budget requirements to get that piece of equipment, which makes it so much more difficult.

Mrs Cunningham: This is to whomever would like to respond to this. There were three reasons, but one of the main reasons, the one that seems to be the most important reason for this piece of legislation, is quality assurance. That is what the government has put to us.

My question is fairly straightforward. You have rather convinced me that there seems to be a level of quality assurance out there now. Specifically, how would this amendment improve upon the quality assurance aspect of this legislation?

Dr McCallum: There is significant quality assurance in most hospitals; in fact, in practically every hospital. There is excellent quality assurance regarding equipment and physicists are employed to examine it. There is quality assurance regarding reporting in comparison with pathology reports.

But I am not sure that there is a tremendous amount of quality assurance in private radiology offices. In fact, I was part of a group of private radiologists for many years and we actually employed a physicist from the hospital as well to

come and give us some quality assurance on our equipment, but I think that is quite rare.

If the amendment is passed, then I doubt if it would have any significant effect on quality assurance. I think the amendment is purely something that removes some payment in the form of a T component. If it is replaced by something else, it would depend on what the something else is, but as far as quality assurance is concerned, I personally cannot see the amendment affecting quality assurance significantly.

Dr Wortzman: Quality assurance is done in teaching hospitals, as Dr McCallum has stated. I know in our hospital we have to have a quarterly report that goes to a central committee on quality assurance and all aspects of our work are monitored.

We see cases that come in to us from other private offices where there is no quality assurance. They do not spend the time on the cases, and if it sounds like a complicated case, it is not economically viable for them to do it. We had a case last week of an ultrasound examination. The fellow spent some time with us, knew us, sent it in and stated he could spend only five minutes on the case, that it was too complicated, so he sent it to us. It was an obvious case of an anencephalic monster which had to be terminated.

Not only that, though, in quality assurance they do not even keep hard copy. We cannot get a report or see the image of many of these cases done in ultrasound sections. Some of them are on tapes and the tapes are not available. There are lots of places out there that I do not think have quality assurance at all. The HARP commission talks about radiation protection. It really does not go into the quality of work or the hard copy. We keep our hard copy for 10 years now. I do not know what a private office does.

Mrs Cunningham: Could I ask you then if you would agree with your colleague in that this bill does not solve that problem?

Dr Wortzman: Not at all.

Mrs Cunningham: Would you have other suggestions for the ministry if that happens to be the main criterion or concern of the government with this amendment?

Dr Wortzman: The bill does not solve the problem. Presumably the regulations that would ensue would, if they were directed properly. Do you agree with that?

Dr McCallum: Yes, I do.

Mrs Cunningham: The other part I would like to pursue a bit is the issue of the planned

funding base. I have written the words down very carefully. The third issue with this resolution is "to support a planned funding base." Does this amendment support such a thing in the delivery of services that you are professionally involved in?

Dr McCallum: May I comment on that?

The Chair: Please, Dr McCallum.

Dr McCallum: First of all, I think that Bill 147, just by virtue of its name, the Independent Health Facilities Act, does not actually apply to hospitals. However, the wording of the amendment at the present time could be applied across the board. So there are two factors here. One is the bill and the other is the amendment. It may be that the bill would not apply to hospitals, but the amendment could.

The Chair: Is that a complete answer?

Dr McCallum: No.

The Chair: I am sorry. We are running very close to the time so I would ask you to—in fact, we are over the time.

Dr McCallum: Sorry. The amendment, if it is passed, may affect the hospitals, and then one would be talking about a base funding, but the bill in itself is talking about independent health facilities with a base funding. I am concerned with hospitals, not private offices or private health facilities. I am not quite sure if that answers your question.

Mrs Cunningham: You mean you are concerned from the point of view of your experience with hospitals?

Dr McCallum: Yes.

Mrs Cunningham: We can discuss it further.

The Chair: Our minister, Elinor Caplan, has asked to clarify at this moment and I would certainly like her to do that.

Hon Mrs Caplan: If it is acceptable, there are a couple of points that I have heard raised which I think should be clarified.

One is that this bill would require quality assurance in facilities outside of hospitals. The whole intent of this bill is to make sure that the same kinds of standards and quality assurance apply in an independent health facility as you describe presently existing in hospitals. That would be a requirement and in fact an obligation of this bill. That is really the intent. Section 27 is the one that I would refer you to. I think it would resolve your concern about how we would ensure quality outside of the hospital environment.

Second, and I know that Dr MacMillan expressed this earlier, as we have discussed,

through the implementation, which is an operational detail, there is no intention whatsoever to impact adversely on the budgetary needs of the hospitals. In fact, I have made this statement in other environments and I would be happy to make it here again today: When it comes to accessibility, this bill is to allow for the planned quality assured enhancement of facilities in appropriate locations.

Also, there is no intention—and in fact, I will phrase it in the positive—the intention is to ensure that anyone who is providing a needed quality service outside of the hospital environment will not be adversely economically impacted by the provisions of this bill. I believe that through consultation and discussion, those details can be resolved through the implementation of the act.

The point I would like to make is that I share your concern about the issue that was raised before this committee by the College of Physicians and Surgeons of Ontario and by the Ontario Hospital Association. I have heard directly from a radiologist such as yourself about the fact that outside of the hospital environment there is no obligation for quality assurance, no ability to plan where facilities should be located and no appropriate funding mechanism to ensure that they are fairly and appropriately funded.

The Chair: Thank you, Minister, Dr McCallum, Dr Ho and Dr Wortzman. Dr Christopher Rose, please.

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Mrs Cunningham: I just want to make it very clear why I am at this committee hearing today. I am asking questions of the witnesses. The responses I got to my questions were somewhat different than what the ministry just presented to us, because my questions were very specifically related to the amendment we are here talking about. I do not want to argue with anybody, but the responses are different and I think it is up to us to weigh all those responses and to see if we can come up with some kind of an improvement. That is all I want to say.

The Chair: All of those questions and answers are recorded in Hansard.

Mrs Cunningham: That is fine, I just want to make it very clear that the responses were very different, based on the expertise of the witnesses, and that is what we are here to listen to.

The Chair: When the minister, who is with us very infrequently, asks to clarify, I think—

Mrs Cunningham: I have no problems with that; I am just telling you why I am here. The

answers were different and I just want to make it very clear I do not—we can discuss it later.

CHRISTOPHER ROSE

Dr Rose: I would first of all like to thank you for the opportunity to make this presentation. I have a written brief, but I will not be reading from it in full. I believe it would extend beyond the time limits.

I wish to address a number of points which I have not heard addressed up to this point, and I do not wish to repeat things which I have already heard. In general, I would like to say that I wholeheartedly support the position that was presented by Dr Richardson and Dr Bechai.

I am a physician, a specialist in diagnostic imaging. I practise as part of a group of physicians in diagnostic imaging. We provide services to hospital patients and to outpatients in community centres.

That is my first point, which you have heard before, and I apologize for repeating on this issue, but we are essentially the same group of people operating in the hospital context as operates in the private setting. We do not have different sets of standards that we leave at the hospital door when we go to our private offices. We are the same group of people providing the same care in different settings.

The legislation, as it was originally drafted, would seem appropriate, to my inexperienced eyes, as it applies to surgical facilities, but I feel that it will be disastrous for what Dr MacMillan said yesterday were the 1,800 potential other health care facilities that would be included under the legislation as it currently stands.

We, the physicians who provide diagnostic services, are of course in favour of quality control and cost containment. We do not have any issue in that area. We just do not believe that this legislation as it currently stands is appropriate.

As a legislative body, you thought it worth while to spend months drafting legislation which was originally intended to deal with 20 or 30 outpatient surgical facilities. Would it not be more appropriate to spend as much time to draft specific regulations to deal with the estimated 1,800 existing community care providers and the facilities which they operate?

I have a number of other points which I will address very briefly, and perhaps they will appear a bit disjointed, but it is just to get them in in case I run out of time.

I believe that the proposed legislation will duplicate bureaucracy and be expensive to

administer, and I do not believe that there will be any significant gain. I believe that the proposed licensing period is inconsistent with the ministry's own accounting guidelines. I believe that access to health care will decrease and valuable human resources will be lost if this legislation goes forward as it currently stands.

As you have already heard, patients are currently provided access to diagnostic imaging services in the same manner that they are provided access to any other type of specialist care. They are referred by their family physician or other primary care physician for specific diagnostic tests. Physicians refer their patients to existing facilities, whether they be in-hospital or out-of-hospital, based on the belief that the patients will receive the best service available.

The disruption of the provision of community-based outpatient services which this amendment will produce will have its greatest effect in smaller communities. Physicians who have normally used their own capital to establish these facilities will not be willing to do so under the proposed legislation because of the profound uncertainty and compounding bureaucracy which it creates. This will undoubtedly decrease the availability of service. I am personally aware of three clinics operating in smaller communities in which there are no hospitals and no other available service. These clinics are planning on closing because of the uncertainties, the bureaucracy and the cost implications that are inherent in this legislation.

The removal of community clinics will in many cases result in hardship for the affected community members, such as women with small children, the elderly, the disabled, people who have to take a day off work in order to drive someplace to have a test done; all of these people will be adversely affected. They will no longer have local service and undoubtedly will be forced to endure long waiting periods in distant urban centres.

The secondary consequence, as we have already heard, is that existing, already crowded hospital facilities will become even more crowded.

The creation of additional and redundant bureaucracy to deal with the 1,800 existing facilities will inevitably be very costly, as I have already stated. I would note that the proposed mechanisms for quality control which the legislation envisages are substantially a duplication of controls that currently exist.

The proposed legislation provides in section 24 that the college of physicians and surgeons

shall provide assessors to ensure quality control. This is substantively a duplication, in that the college already assesses quality control for all physicians in Ontario. This is nothing new; it is just redundant. There is an existing effective quality control and professional peer review system in place. Contrary to rumours that I have heard, my understanding is that the peer review process and quality control are compulsory, not voluntary. I do not really see that this legislation does anything to affect that; certainly nothing to improve it.

I would also refer the committee to the existing regulations which already relate to the provision of diagnostic imaging services. We have heard mention today of the HARP act. Excuse me if I am quoting you incorrectly, but I heard Mr Eves say something to the effect that Mr Sharpe had said that the HARP regulations only applied to equipment or something like that?

Mr Eves: I believe that is what he said, yes.

Dr Rose: I would refer you to section 22. I do not have Hansard, so I do not know exactly what he had, but just to make sure there are no questions in that regard, subsection 22(e) specifically states that the Lieutenant Governor in Council may make regulations "governing or limiting, or both, the purposes for which any class of persons may operate" equipment or any class of equipment. There are two components to the provision of services: the facilities and the care providers. The current legislation provides for regulation of both.

Also, just on that point, if I may take a little digression here, I believe that Dr MacMillan stated a little bit earlier in today's proceedings that HARP covers everything except the care providers. I would note that, as physicians, and as I am sure Dr MacMillan will agree, as care providers, we are all already regulated by the college of physicians and surgeons in everything that we do. Everything that involves our professional lives is regulated.

I would also like to make a distinction. We have heard how hospital accreditation is a useful instrument to achieve quality control, and I would agree with that. I think the fundamental distinction which must be drawn, though, is that part of the reason for hospital accreditation is that hospitals have many, many employees who are not responsible to anything or anybody other than their employer. It is therefore necessary to have hospital accreditation in order to ensure quality assurance in the hospital setting.

However, in a physician's office, the physician is ultimately responsible. Anything that

deals with patient care is the responsibility of the physician and that is already regulated by the College of Physicians and Surgeons of Ontario. So I do not think it is appropriate to simply assume that something like hospital accreditation, with all of its implications, is necessarily the right way to go in a private clinic setting.

The Chair: I have somebody who would like to ask a question. I think at the most you have about five minutes left, so would you care to sum up in a sentence or two?

Dr Rose: I am going to make one very quick point, if I may, and that relates to the transcript that I have of Dr MacMillan's statement yesterday. I specifically refer you to page 8 of your presentation, Dr MacMillan, where you say: "I think there is general agreement that the CPSO is the most appropriate body to do this"—regulate—"However, these standards are too important to allow for voluntary compliance."

As a physician all these years, I have always been under the impression that I had to, it was not a voluntary matter at all, but the college of physicians and surgeons regulates what I do. I expect to be regulated; I had no idea that it was voluntary; my assumption was that it was mandatory.

With that, I will conclude, if I may, with what may sound like an emotive plea, but I think what was originally conceived in this legislation was something that was good, that would create increased access to health care. My perception at this point is that what has ultimately been produced is going to be very bad for health care.

1700

Mr Eves: Mr Sharpe not being here, I would like to clarify, first of all. I believe that what Mr Sharpe said yesterday, although I do not have a copy of Hansard before me, were words to the effect that the HARP was designed to really assure us quality control in equipment and that the point he was trying to make, to be fair to him, was that it assured no protection for the patient as to the level of care. I believe that is the point Mr Sharpe was trying to make yesterday, so I just wanted to clarify that point, just to be fair to Mr Sharpe.

The Chair: We have another representative from the ministry's legal branch.

Mr Eves: Noting the note Dr Rose has summed up on, I guess I would like to hear Dr MacMillan's response to the point Dr Rose and others have made about the comment about voluntary compliance on page 8 of yesterday's notes.

Dr MacMillan: Rebecca Gotlieb is our legal counsel with the Ministry of Health. Rather than debating doctor to doctor, let us have a legal opinion. She has studied this matter fairly carefully.

Ms Gotlieb: If I can explain what Mr Sharpe said yesterday, what Mr Sharpe said yesterday was that the HARP licensing relates to the quality assurance of the machinery and the staffing component, it does not relate to the medical component of the practice of radiology. You are right; the college is responsible for that medical component, but the college is responsible for all doctors throughout the province. It does not have the ability to selectively focus on an ongoing basis on a particular specialty. With this bill, we have the power to direct the college to actually focus on a specific facility if there is a problem with the quality assurance in that facility.

Dr Rose: May I make a point? I did not mean to slight Gilbert Sharpe. That was not my intention. As a matter of fact, Gilbert's tutelage was one of the reasons why I went and got my own law degree.

Mrs Cunningham: Most physicians are going to need law degrees.

Dr Rose: Perhaps.

You refer to the ability of the ministry to direct the college to focus one of its assessors or whatever on a particular practice. Am I not correct in stating that the ministry already has that? The college of physicians and surgeons has a responsibility, whenever there is a complaint, signed, directed from anybody, and Dr MacMillan certainly is one of those people who can do that, can send a complaint. That complaint obliges the college of physicians and surgeons to follow up, to conduct an investigation, to conduct hearings, if appropriate, into that matter. That mechanism already exists; it does not need this legislation.

Ms Gotlieb: It is based on complaint. What we can do with this legislation is to incorporate a quality assurance mechanism in the terms of the conditions of the licence. It is much more systematic. And at that point, if there is a problem, we can bring in the college. It is not dependent on a complaint, whether it be from the ministry or the patient. It can be done in a systematic, ordered and co-operative way.

The Chair: Thank you all very much. The time for this presentation is now completed. We will now have Dr Conway Don, please.

DR CONWAY DON

Dr Don: My name is Conway Don and I am professor and former chairman of radiology at

the University of Ottawa and radiologist and former chief of radiology at the Ottawa General Hospital. I am here as a private citizen, but I have an interest to declare in that our hospital group runs a small X-ray clinic in the community, but this contributes little less than six per cent of our income, so I think my financial interest is insignificant.

I am just wondering if the committee perhaps has been considering the trees so markedly that it has not been able to see the wood. I am concerned with the wood. I am concerned with the principles underlying this legislation.

The purpose of this amendment is to bring into Bill 147 the independent diagnostic radiology facilities in this province. The rationale for the bill, according to the ministry, is as follows:

"The Ministry of Health recognizes that new technology has made it possible to safely perform some medical and surgical procedures in an out-of-hospital setting. A number of facilities have already been started to offer such services in an environment somewhere between a doctor's office and a hospital. The Ministry has not been able to fully fund these, nor has it been able to ensure the same degree of quality control as is the case in hospitals. The Independent Health Facilities Act will provide the Ministry of Health with a legislative base which will assist in meeting its commitment to ensure the planned development and expansion of needed community-based health care services."

As you will see, this act is very restricted in scope, and in no conceivable way could this be deemed to apply to the long-standing and established services of diagnostic radiology. Moreover, this has been repeatedly affirmed, and in writing, by spokesmen for the ministry, and as recently as August 1989.

So why has radiology been dragged into this totally inappropriate bill? This is the puzzling aspect of this. The act went through its first reading without varying from its terms of reference, and proceeded to do so until the last moment of the second reading, when quite unexpectedly Mr Reville introduced a motion to remove selected technical fees from the OHIP schedule and deem them facility fees, with the resultant incorporation of diagnostic radiology facilities into the scope of and under the control of Bill 147. Mr Reville stated that this motion had not originated with him but had been handed to him by gnomes from the Ministry of Health, presumably those same officials who had repeatedly assured the Ontario Medical Association and the medical profession that they had no

intention of bringing diagnostic radiology facilities under the act.

On what grounds, then, did Mr Reville introduce his amendment? I would like to refer to Hansard. Mr Reville states, "The way diagnostic radiology is treated, it is one of the anomalous operations in the health care system whereby a fee over and above the insured service fee is allowed for and is paid for."

If I may comment on this, this is just nonsense. There is no fee above the insured service fee. The total fee is the insured service fee that is allowed for in the OHIP schedule of benefits. This is how radiology services are billed all over the world. This fee covers both the radiologist's interpretation and supervision fee, termed the P, and his technical expenses, the T. The T component was introduced for the benefit of hospitals. Radiologists working in hospital departments bill OHIP for the total fee, but a portion of this obviously has to be remitted to the hospital for its technical costs, and the T tariff was devised to establish a uniform and fair technical component of the total fee for the hospital. Previously, this component had varied considerably from institution to institution. There is only one fee billed to the ministry, and it is composed of technical and professional components and is completely covered by OHIP.

Mr Reville then comes to the nub of the issue. He states that this is a matter of an \$80-million-plus a year health expenditure and continues, "The top billing was \$4.1 million, \$3.75 million is the second, \$3.08 million is the third and on down." He is concerned that billings "have increased over last year by almost 25 per cent" and states, "I have been concerned about what I think is fair to describe as almost exponential growth in this area."

If I may comment on that, Mr Reville expressed concern for the increasing cost of radiology service provided for the citizens of Ontario, but remarkably, at no stage was he concerned that these same citizens needed these services, and will need them in increasing volume as the value of the new advances in radiology becomes more obvious to the referring physicians and their patients. The fact that these fees seem excessive to him is due to the fact that he does not realize how expensive the technology in radiology is.

We are a 530-bed hospital, and if the radiologists were to bill the radiological fee for all the work done in the department, it would amount to around \$7 million a year, of which around \$5 million would go for technical costs

engendered by the hospital. Around 72 per cent of a total fee goes in technical costs.

The billings that Mr Reville objects to merely reflect the amount of work done by these clinics, and against this background, it can be seen why these billings are so large. Moreover, these examinations are not engendered by the radiology clinics but by the referring physicians, and it would be the same cost to the taxpayer whether the examinations are performed in a hospital or in a private office.

The only way that money can be saved for the taxpayer under this system is if the hospitals are unable to cope with the extra flood of referral work and ration examinations by excessive waiting time for the patient, which, incidentally, is what they are already doing. I am sure that this is precisely what is envisaged by this amendment.

1710

I now turn to Hansard for another reason given for this action advanced by the minister herself to this committee.

"Mr Eves: I am in support of the principle that Mr Reville has enunciated. As I understand it, having discussed the matter with the minister and others, something like this was requested by the Ontario Hospital Association and the College of Physicians and Surgeons of Ontario.

"Hon Mrs Caplan: The motion responds to an issue that was raised by the college of physicians and surgeons on the issue of diagnostic facilities and its concern regarding quality assurance in those facilities and the proliferation of those facilities."

Let me make it clear: The Ontario college did not request that radiology be incorporated into Bill 147, nor did it support the incorporation of radiology into Bill 147, although I think some members of the committee may be under this impression. I understand the college has put this denial in writing to the minister and to the Ontario Medical Association. In any case, this is completely irrelevant to the incorporation of radiology in Bill 147. Radiology clinics are already subject to regular inspection for radiation safety by the ministry under the Healing Arts Radiation Protection Act.

No one would dispute the importance of quality assurance programs, least of all the radiologists themselves. In fact, the radiological section of the OMA has initiated and already has functioning a quality control system of peer review for independent facilities conducted for it, I understand, by the Ontario College of Physicians and Surgeons. All that was needed

was to negotiate with the radiologists a more formal system, if that were thought to be needed, also under the aegis of the Ontario college.

It is impossible to maintain, as the minister has, as I understand, that this necessitates the incorporation of radiology in Bill 147. In my view, this excuse was used by the minister and by the ministry as a smokescreen to hide the real motivation behind this amendment, which is to control diagnostic radiology in independent offices and to control the amount of service they provide to the citizens of Ontario.

I think that Mr Reville, in support of this amendment, produced inaccurate and misleading information which misled this committee. I am of the opinion that Mr Reville is blameless in this regard and that he relied upon information supplied for him by officials of the ministry.

The Chair: You are well into your presentation. Are you almost ready to complete it? I have no request for questions at the moment. I do not have a copy of your brief.

Dr Don: I brought it with me, yes. I started a little late and think I am getting it on.

I think this amendment, which is so inappropriate, which was moved at the last moment with no reasonable time for consideration and with an abundance of misleading information, was premeditated and masterminded by officials of the ministry, almost certainly the same officials who had previously repeatedly denied any intention of incorporating radiology. I think the committee has been manipulated by the bureaucrats in the ministry.

I will leave out my comment on the appointment of a director, as, strictly, this does not relate to the amendment, but I hope that if you read my brief, you will read it.

In my reading of Hansard, I also wonder if the committee fully understands the function of independent radiology in this province. To set up a small but well-equipped, modern X-ray clinic could involve capital equipment costing at least \$1 million, together with expensive structural modifications, radiation protection, and employing staff of five to eight registered technicians, secretaries and nurses.

Radiologists cannot deal directly with or advertise to the public and must rely entirely upon referral work from physicians in the area. No radiologist can go into business and hope to create the clientele. He can only afford to go into a situation where there is an established need.

A clinician can currently choose to refer his patients either to a local independent facility or to a local hospital and will decide on the basis of

quality of service to the patient, quality of service to the referring physician and convenience for the patient. Although many such facilities are in the centre of town, for obvious reasons many others are set up in more remote areas, where they can provide this service to patients who have no local hospital. This provision of the services in the community currently being provided by the independent facilities is exactly one of the major *raisons d'être* of the present act.

Currently, around 50 per cent of all outpatient examinations in the province are performed by independent facilities, and the reason their workload is expanding, to the dismay of Mr Reville, is that they are providing a much-needed and efficient service to patients and to their referring physicians. If it were not efficient, the work would go to the hospitals.

The big danger, as bureaucracy sees it, is that independent facilities will expand to meet the demands of the patients, whereas the hospital facility is totally controlled and unable to do so.

As an instance of this, I will quote the situation for patients in my own area. A patient needing a mammogram has to wait nine weeks to get an appointment at our hospital but can be examined the next day in our office. A patient for ultrasound will wait eight weeks at our hospital but one day at the office. Moreover, the ministry has prevented independent offices from providing CAT scanning and magnetic resonance imaging deliberately and as a measure to conserve money. As a result, the waiting list for vital CAT examinations in this province is up to three months and the waiting list for MRI is up to 14 months. Consequently, patients who can afford it are going down to the United States to have their examinations done.

I estimate that radiologists in the province have more than \$60 million invested in X-ray equipment and employ more than 3,000 people. These practices are now jeopardized by the unilateral abolition of the technical tariff, a decision taken, moreover, with no prior consultation whatever with the medical profession. Radiologists have made these very considerable investments and commitments, relying with complete confidence on the good faith of the minister and the government, and I think this faith has been betrayed.

The Chair: Dr Don, I now have one questioner, and I would like to grant that. It will have to be very brief, however.

Mrs Cunningham: Dr Don, this is worse than waiting in a doctor's office, coming before this committee.

Dr Don: Pardon?

Mrs Cunningham: It is worse than waiting in a doctor's office to be on time, coming before this committee from time to time. There is a sense of urgency, and I am not being critical.

The Chair: I am trying to be fair.

Mrs Cunningham: I know. I would like you to respond to this question. You are a professor of radiology at the University of Ottawa. The real reason that the government is hanging on this particular section has to do with quality. I am asking you if you are familiar with the Healing Arts Radiation Protection Act.

Dr Don: Yes.

Mrs Cunningham: Do you agree with the response, and that is that without this amendment, section 7, which includes radiologists, we would have less quality? Do you believe that we need it to have better enforced quality of care, I am now talking about?

Dr Don: Sorry?

Mrs Cunningham: What is your response to the use of the Healing Arts Radiation Protection Act with regard to the ability of the profession right now to regulate itself around quality? Because that is the only reason right now, that we have heard in the last couple of days, that this particular section is necessary. Given all the other things you have said, the government is not going to listen to that, but it may listen to you with regard to quality assurance. Do we need this amendment?

Dr Don: We certainly do not need this amendment to provide quality assurance control. As I explained here, radiologists have already, in conjunction with the Ontario college, started their own quality assurance program. This could be expanded; this could be made obligatory. There is not the slightest reason on earth why this could not be done. This could be made obligatory at any stage. It has nothing to do with Bill 147.

I am not sure; I think the Half-Back could be expanded. But whether or not, it could be very simply done by expanding the present system. I think that Bill 147 is a smokescreen to conceal the fact that they want to diminish the amount of services provided to the citizens of this province.

The Chair: Thank you very much, Dr Don.

May I now have the representatives from the Ontario Association of Medical Radiation Technologists.

Mrs Gallagher: Thank you. I would just like to say that the sun is shining in Ottawa.

The Chair: Is that a weather report?

Mrs Gallagher: Yes, it is.

ONTARIO ASSOCIATION OF MEDICAL RADIATION TECHNOLOGISTS

Mrs Gallagher: The Ontario Association of Medical Radiation Technologists consists of approximately 4,000 certified technologists in the professions of radiography, nuclear medicine and radiation therapy. There are approximately 1,500 technologists employed in private clinics.

The association supports Bill 147, The Independent Health Facilities Act, in principle for the following reasons: It reduces health care costs, ie, the duplication of examinations with referral to different clinics or hospitals; it reduces radiation exposure to our patients through the reduction of repeated examinations; it minimizes the redundancy of imaging services; and it eliminates the purely profit-oriented entrepreneurs in favour of those interested in providing quality care services.

1720

However, the amendment to section 7, which I understand is what we here for, raises some concerns that we would like to address. Our concerns regarding the deletion of the technical fee from OHIP and its replacement with a facility fee under the bill are multiple.

The government has not adequately outlined the format of the proposed facility fee for us to make an informed decision as to the ramifications. However, we have identified the potential for: (1) serious underfunding for both clinics and hospitals, although I am led to understand that this does not include hospitals now; (2) lack of maintenance of the equipment; (3) delayed upgrading and replacement of equipment; (4) reduction in the availability of services in some geographical areas; (5) overburdening of technologists and hospitals; and (6) the potential closure of clinics, unemployment of skilled, specialized technologists and delay in access for patients.

As a diagnostic service, medical radiation technology is presently regulated by several legislative acts at both the federal and provincial levels. We need to be assured that adequate funding will be available to ensure that mandatory quality assurance guidelines are not compromised. The possible restriction of funding could result in the use of antiquated and obsolete equipment, causing a risk to the patient. This could be a step back for our profession, our services and quality patient care.

In 1979, Dr Ken Taylor addressed these very problems on the front pages of the newspapers, embarrassing both the government and our profession. Thus, the Healing Arts Radiation Protection Commission was established and the HARP act was incorporated.

The Healing Arts Radiation Protection Act and the commission were formed in 1980 to protect the public from unnecessary radiation. The act contains strict mandatory quality assurance guidelines for radiography and the association is presently negotiating with the commission for quality assurance guidelines for nuclear medicine, radiation therapy and the proposed breast-screening clinics. Under the HARP act all X-ray facilities are inspected by the X-ray inspection services, a branch of the Ministry of Health. All technologists, under the HARP act, must be registered with the Board of Radiological Technicians to be employed.

The Radiation Emitting Devices Act is a federal act with mandatory guidelines for the sale and installation of new radiation-emitting devices.

The Atomic Energy Control Board has strict guidelines for controlling the sale, storage and disposal of isotopes for nuclear medicine.

The association has some concerns on the real impact of the funding of some OHIP examinations which are already underfunded.

Intravenous pyelograms, an examination of the kidneys, costs a department approximately \$80. The OHIP P fee is \$21 and the T fee is \$50, showing a loss already of \$9 per case. As the present funding is not sufficient to cover the cost of the contrast media required, all procedures using nonionic contrast media are costing the government money.

In the Public Hospitals Act regulations, the new policy for the retention of films for 10 years suggests costs of \$20,000 per year for 30,000 examinations for off-site storage. This cost would be greater for paediatric centres as retention of films is required for 10 years after the patient's 18th birthday.

The association wishes to submit the following suggestions: (a) Devise a mechanism to ensure adequate funding in clinics and hospitals; (b) provide a mechanism to guard against duplication of regulations already in place for medical radiation technologists; (c) maintain adequate and appropriate services in the province without jeopardizing quality patient care; and (d) provide standards and regulations for clinics to be governed, as are hospitals, by the Public

Hospitals Act, and provide enforcement for the HARP act.

The Ontario Association of Medical Radiation Technologists wishes to thank the committee for allowing us this time to express the concerns of our members.

Mr Reville: Thank you for appearing. We had not heard from the radiation technologists yet. You must have come in from Brantford today.

Mrs Gallagher: Ottawa.

The Chair: She gave us the weather report. Did you not hear that, Mr Reville?

Mr Reville: It says Brantford on your letterhead.

Mrs Gallagher: That is our head office. I am the president, so I am here.

Mr Reville: I did not understand the point you made on page 3 about intravenous pyelograms, which I see get reimbursed at \$21 for the professional fee and \$50 for a technical fee. Is that \$9 less than cost? Is that what you are saying?

Mrs Gallagher: The dye alone is \$100 for the bottle, the omnipaque, which is what we use. It is a nonionic. Every time we do a case, we are losing money because the OHIP coverage is not sufficient to cover the cost of the contrast media.

Mr Reville: So you do not do the test, or you do do the test?

Mrs Gallagher: Oh, we do do the test, at a loss.

Mr Reville: Is it below cost because of the freezing of those T fees?

Mrs Gallagher: I am sorry?

Mr Reville: At one time the cost was covered, but it has become more expensive?

Mrs Gallagher: Yes, because of the change in the contrast media that they are now using. The cost far exceeds what OHIP is paying.

Mr Reville: Are there any comments on that from the ministry?

Dr MacMillan: Just for clarification, because of the sudden change, the Ontario Medical Association, which makes recommendations to the ministry about the relative value of these, to my knowledge, has not yet made a change in the fee, which I am sure will come as a result of this unexpected burden. The T fee certainly would be changed in accordance with appropriate costs.

Mrs Gallagher: This has been around for about two years anyway, for sure.

Mrs Cunningham: My question has to do with standards and regulations for quality. I

really appreciate your coming here. It is great to hear from people representing what I call front-line workers.

On page 4, under (d), where you said, "governed as are hospitals in the Public Hospitals Act," you added "and provide enforcement for the HARP Act." You said that.

Mrs Gallagher: Yes.

Mrs Cunningham: You probably said it for a reason. Why is it not being enforced to the extent you would like to see it enforced? What is missing?

Mrs Gallagher: Perhaps the word "enforced" is not correct. I added that right at the last moment because of some of the conversation I have been hearing today.

Mrs Cunningham: That is all right. Maybe "applied."

Mrs Gallagher: Okay, "applied" is probably the word I am looking for.

Mrs Cunningham: Where do you think we need to be able to apply an act that we already have in place?

Mrs Gallagher: I think that the radiation inspection bureau perhaps needs more people out there to go around and do the inspections. I think this is part of the problem. I think the inspection bureau needs support from the government and from other agencies when it finds things are not correct. I am referring to perhaps a fee or closing down of services. I think if they had that support there, then you would find that a lot of places would succumb to having to fall apart.

Mrs Cunningham: If I may, I would like to just pursue a little bit this whole issue of quality. I am not in the business of duplicating bureaucracy; that is the thing I stand against the most. This act you refer to, this Healing Arts Radiation Protection Act, the same one, HARP, subsection 22(f) already provides for the establishment, maintenance and evaluation of quality assurance programs in diagnostic facilities. I am referring to a previous brief. Can I be sure that you are saying what we need is the support staff to make sure it happens?

Mrs Gallagher: Yes, but you also need something there to reprimand people if they do not, a fine of some sort. I think they need to have some clout when they go in. I am not saying they are going to find lots of places to use it, but I think they just need a little bit more clout on what they are saying. If they are saying, "This equipment is wrong and you have to fix it, blah, blah, blah, and if you do not have it fixed at such a time—

Mrs Cunningham: So instead of adding this level of bureaucracy with what is being suggested, is your suggestion then maybe to fine-tune what we already have and add a little bit of emphasis? Sometimes fines are considered emphasis.

Mrs Gallagher: Yes, that is how I would like to see it go. I speak on behalf of the association, of course. When I say "I," that is not a personal viewpoint.

Mrs Cunningham: You have been most helpful.

The Chair: Are there any further questions of Mrs Gallagher? You will see that we are now 15 minutes ahead of schedule if there are not. As this is an association, it has been allocated 30 minutes, but that does not mean it has to take it. We could all go home maybe 15 minutes early, or at least leave this room 15 minutes early, if there are no further questions.

Mrs Gallagher: You mean I was the last one?
1730

The Chair: No, there is another person, who I think likely would be here by now, from the Cobourg District General Hospital. Are there witnesses for Cobourg? They are here, so if there are no further questions, we might as well catch up and go ahead. Thank you very much, Mrs Gallagher. I hope it stays sunny in Ottawa.

Mr Grieve and Mr Potter, the president and executive director of the Cobourg District General Hospital.

COBOURG DISTRICT GENERAL HOSPITAL

Mr Grieve: My name is Peter Grieve. I am the chairman of the board of the Cobourg District General Hospital. With me is Rod Potter, who is the executive director of the same hospital. We appreciate this opportunity to present the views of the Cobourg District General Hospital with respect to Bill 147, the Independent Health Facilities Act.

Cobourg is a rapidly growing town located 70 miles east of Toronto and seven miles east of Port Hope. Cobourg hospital is a 126-bed public general hospital offering primary and some secondary care to a catchment population of 25,000 people. The hospital operates on a global annual budget of approximately \$11 million, and we like to think it operates efficiently. We have consistently brought in balanced budgets and lived by them and our cost per patient-day has been consistently the lowest in our peer group of hospitals with 100 to 199 beds.

We would like to express broad support of the act regulating the planning and funding of nonhospital health facilities, and in particular nonhospital diagnostic facilities. However, we share the misgivings of the Ontario Hospital Association with regard to this act which have already been communicated to you.

We at Cobourg District General Hospital recently completed a strategic plan covering the next three to five years. In the course of preparing this plan, consultations were held with a total of 23 external sources, including local municipalities, other community health care providers such as home care, the Victorian Order of Nurses, etc, social services, the district health council, the Ministry of Health and neighbouring hospitals. We also had considerable input from our own board and staff.

Our plan is in line with the Ministry of Health policy and, among other things, envisages more emphasis on ambulatory care and closer liaison with the other health care and social service agencies in our catchment area. To this end, we have already had one meeting with these agencies to examine existing linkages.

During the period of preparation of our strategic plan, we were made aware that a group of local physicians had been discussing with radiologists from outside Cobourg the possibility of opening a private clinic to provide diagnostic imaging services, including ultrasound.

Our hospital already provides this service on a 16-hour-day basis, with the other eight hours on an on-call basis. This department generates gross outpatient revenue of approximately \$640,000 per year. The private clinic estimates that it would capture approximately 50 per cent of this revenue. The hospital therefore stands to lose \$320,000 of gross revenue but would be expected by the community, and no doubt by the physicians, to maintain the same hours of service. Clearly this would represent a fragmentation of health care effort in our community instead of the integration which we are striving to achieve.

Our strategic plan had just been made public when a group of physicians in Port Hope announced their intention to build a privately operated clinic to provide, among other things, diagnostic imaging, including ultrasound and mammography. The press announcement of this facility said that it was "in line with planning for the lakeshore area." To our knowledge, there has been no consultation of the type that we undertook in preparing our strategic plan.

Again, the Port Hope and District Hospital is already providing these diagnostic imaging services, excluding mammography. I cannot speak for the Port Hope hospital, but the creation of such a duplicate service would undoubtedly have detrimental effects which might and probably would spill over and affect the Cobourg hospital.

Although both communities are growing rapidly in population, we believe that their needs can be met by the existing hospitals providing a safe, efficient program that is continually monitored for safety and quality assurance by the Ministry of Health, the Canadian Council on Health Facilities Accreditation and by the Healing Arts Radiation Protection Act, plus many other acts, of course, which apply to many other facilities.

Our own in-house quality assurance programs, we believe, are rigorous. We would strongly urge that private clinics should be required to follow the same program approval procedures that hospitals adhere to; that is, to justify the need for a program, ensure that it is not being provided by another facility in the same catchment area and that the program receives the approval of the district health council and the Ministry of Health prior to implementation.

We adhere to this planning and approval process. My own view is that it is not necessarily the best process, but it is the one we have to use and we feel that other people should use the same process.

In regard to the amendment changing the technical fees to a facility fee, we support this amendment, but we would also like to point out that the amendment, if these T fees are removed from the OHIP schedule, would require that alternative funding arrangements be made for the funding of hospital diagnostic services before technical fees are removed from the regulation. We hope that you will investigate this aspect.

We appreciate your listening to our remarks and hope that the examples we have provided will give you an understanding of some of the detrimental effects that private clinics could have on our existing health care system unless they are subject to the same planning and approval procedures as existing facilities.

Mr Reville: I appreciate your presentation. It is not dissimilar, in a way, to one we had yesterday from the Norfolk General Hospital, which is a hospital about the same size as yours, or maybe a little bit bigger. They are concerned

that they might lose about \$300,000 under similar circumstances.

I have had telexes now—I guess we do not call them that, we call them faxes, do we not?—from Sudbury General Hospital, Welland County General Hospital, Campbellford Memorial Hospital and St Joseph's General Hospital, all of which asked the same question as you, and I guess at this point we might as well ask it of the ministry. Hospitals are concerned that, while they generally support the amendment, they are worried that if the T fee will not be replaced, then obviously their budgets are going to be in big trouble. Do you want to comment on that, Dr MacMillan?

Dr MacMillan: Yesterday I did—and again today the minister did—state that the intent of this legislation, if passed, is not to jeopardize the funding base for hospitals. Whether or not the T fee remains as a T fee or an H fee or whether or not that basic funding is negotiated in some other way, the minister has given assurances that the base funding is protected.

Mr Grieve: So in effect the system will remain the same.

Mr Reville: It will be called something else in your case, I would think.

Mrs Cunningham: For hospitals.

The Chair: Are there any further questions from any member of the committee? There being no further questions, I thank you very much, Mr Grieve and Mr Potter. Do you have a question now, Mr Eves?

Mr Eves: No, I am asking if the minister is coming back, because I have a question or two I would like to pose to her.

The Chair: She indicated as such, but of course she had no way of knowing that we were going to catch 15 minutes in the wind, so we may not be here when she comes back, unless you would like to stay and wait.

Mr Reville: I am not going to be here when she comes back.

The Chair: I would remind you that of course the room will be used between now and next Monday when we will be meeting again on this same subject for hearings, so I would suggest that you take your belongings completely with you today. We will adjourn this meeting and resume again at 3:30 pm on Monday, which is 6 November.

The committee adjourned at 1739.

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From the Ministry of Health:

MacMillan, Dr Robert M., Executive Director, Health Insurance Division

Caplan, Hon Elinor, Minister of Health (Oriole L)

Gotlieb, Rebecca, Counsel, Legal Services Branch

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Phillips, Gary

From the University of Toronto,

Department of Radiology: McCallum, Dr Ron, Professor of Radiology

Wortzman, Dr George, Professor of Radiology

Ho, Dr C. S., Professor of Radiology

Individual Presentations:

Rose, Dr Christopher

Don, Dr Conway, Professor of Radiology, University of Ottawa

From the Ontario Association of Medical Radiation Technologists:

Gallagher, Dorothy, President

From the Cobourg District General Hospital:

Grieve, Peter, President, Board of Directors



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Independent Health Facilities Act, 1989

Second Session, 34th Parliament
Monday 6 November 1989



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 6 November 1989

The committee met at 1532 in room 151.

INDEPENDENT HEALTH FACILITIES ACT, 1989 (continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chair: I would like to call to order the meeting of the standing committee on social development. We are into our third day of hearings on grandfathering independent health facilities under Bill 147, column T, regulation 452.

Our first presenters today are the Ontario Hospital Association. They are going to be represented by Dr Gordon Cunningham, president, and Dr Dennis Tuck, past chairman, so if you two gentlemen would present yourselves, you may begin immediately.

ONTARIO HOSPITAL ASSOCIATION

Dr Tuck: My name is Dennis Tuck and I am the past chairman of the Ontario Hospital Association. I am accompanied by Dr Gordon Cunningham and I bring the apologies of our present chairman, Duncan McAlpine, who unfortunately had previous arrangements which he had made before this session was called.

Our position, I think, is not very different from that which we took when we appeared before this committee in August. We believe that within the Independent Health Facilities Act there are the opportunities for the Ministry of Health to avoid some of the duplication which we believe exists in diagnostic and laboratory services and also to require independent health facilities to meet quality control standards which are similar to those which hospitals already espouse.

I believe our brief is short and to the point. I might begin by saying that the general position that we take in this brief was confirmed when our association had its annual convention last week. On pages 1 and 2 there is a motion which was passed in that convention—essentially, I believe, unanimously—which reaffirms the OHA's support for the principles of comprehensive needs-based health care planning at the community level and further asks the association to pursue its support for the Independent Health Facilities Act.

I think there are four main points which we make in the brief, which I will assume everybody has. I will not go through these in great detail except to try to emphasize the main points that we are addressing.

First, we believe it is a benefit to the health care system, and therefore to those who work in it and to those who receive its services, that there should be a system of planning which removes what might otherwise be duplication, because duplication surely leads to inefficiencies which, in a time of restricted health care funds, are clearly not good for anybody.

As well as the general case, we have attached to our brief a letter from one of our member hospitals pointing out the way in which in one particular area the growth in diagnostic facilities over a relatively short period of time has been very marked and raising questions about the justification for these increases. Had we had the time, I am sure that we could have produced similar briefs from a whole series of hospitals. I am sure some of these have written to you independent of anything we might say today.

It is our position, as I say, that we support the development of a well-planned and well-managed system, and it is not our intent to try to address this in terms of any specifics except to say that need is surely the test. Whether that need is met by a hospital or by independent diagnostic facilities or by both working in collaboration is something which only the local situation can decide. We support the concept that these decisions be made at the local level by groups, such as the district health council, that have the interest of the community as their charge.

We believe the burden of proof is there. If a hospital says that a diagnostic facility is not needed, then the hospital should be able to prove that. Equally, if somebody wishes to initiate a new facility where one is not present at the moment, the burden of proof should lie upon those who wish to change the system. We believe that proof of need is a very important concept in all of these issues.

We recognize that there are problems with existing facilities, and it is our task to say that we hope the government will address those situations where current duplication exists. I do not believe it is our brief to try to write the

appropriate regulations or clauses in the act but to say this is something of concern to us. We are not out to damage the system, we are out to try to help it.

Third, where new facilities are to be put in place, we believe that there should be a licence-tendering process and we want the Ministry of Health, if it will, to clarify the situation with respect to those diagnostic facilities which might have been put in place since 2 June 1988, which is the cutoff date which the act anticipates.

Fourth, we draw attention to a point which we believe will be addressed by the Ministry of Health but nevertheless has to be made public, that if you change the system of funding as is envisaged under the amendment, then it will surely cause some concern in hospitals because hospitals too make use of the OHIP billing system. We believe that this should be addressed in a facility fee or some similar manner. Again, we do not wish to try to suggest the details. We do believe that this is something which should be settled by consultation.

In general, we support the proposed amendment to section 7 of this bill because it promotes comprehensive needs-based health care planning at the community level, which the Ontario Hospital Association and its member hospitals support. I think that is the substance of the brief and I am prepared to answer questions on that, if there are any.

Mr Elliot: I would like to thank you very much for your brief comments. I look forward to reading the brief itself in detail a little later. A specific question I have of you is related to prior involvement in the process, before today, in formulating the present piece of legislation, Bill 147, that is before us.

These hearings are just to address subsection 7(7), and I would like to keep that in mind, but as a new person on this committee last week, some of the presenters made it very clear that they thought there was some gerrymandering going on in the background through the Ministry of Health with respect to, specifically, subsection 7(7).

I found that very disconcerting, because I had followed the process fairly carefully and thought it was one of the few times around here that all three parties that were serving on the committee were making every effort to go at making the best piece of legislation that we can at this point in time with respect to health services in the province.

In getting clarification on this since our meetings last Monday and Tuesday, I think, for the record, we should maybe clarify what is available to us as committee members, because if a person like myself wants to formulate an amendment to a piece of legislation we are considering in committee, legislative services are available to us to help us formulate that particular amendment.

As well, in this particular case, my understanding is that if anybody on the committee wanted to seek clarification from the ministry personnel with respect to formulating an amendment, he was requested by the minister to actually make that request, and I think the ministry was very co-operative in satisfying every request of that type.

The Chair: Do you have a question?

Mr Elliot: I have already put the question, but in—

The Chair: I wonder if every—

Mr Elliot: I am being very direct here, because I think some very serious allegations were made in committee last week. They were not cleared up by anybody on the committee. I was a new member on the committee, so I took them at face value. I found out that the kind of co-operation on this particular committee with respect to modifying legislation to advantage was followed. What I am asking the gentlemen at the table today is, did you have the same perception with respect to the process as this bill evolved to its present form, specifically with respect to subsection 7(7)?

1540

Dr Tuck: Our involvement with this bill and the amendment in question has been public in the extreme. I have not met, and I do not believe any of the officers or senior members of the staff of the Ontario Hospital Association have met, with any member of this committee privately. I have never addressed any specific written communications on this amendment other than those which have been publicly made to this committee and the public briefs we have submitted. If that is a sufficiently specific statement, so be it. If not, if there are further clarifications, I can meet—

Mr Elliot: I have a supplementary, because what I am really getting at is, do you think that what you put in brief form to the committee was being taken into consideration in the deliberations of the committee?

Dr Tuck: I assume so, yes. Our brief was a public statement. It did not contain any suggested wording for any clauses or amendments, it

addressed principles, as I believe our present brief does.

Dr G. Cunningham: I would add to Dr Tuck that the OHA at no time had any part of suggesting what that amendment would be other than the brief we presented to the committee.

Dr Tuck has made the statement that no one has met with any member of the committee. That was correct until approximately three weeks ago, well after subsection 7(7) had been amended. I had a call from Mr Eves asking if he could meet and clarify the position of the OHA. I informed the chairman that I would meet with Mr Eves, at his request, only for clarification of our position, long after subsection 7(7) was passed by this committee. That is the only contact.

The Chair: Thank you for answering so clearly and honestly.

Mr Reville: May I raise a point of order? I would first suggest that this intervention be added on to the end of the deputation, because it strikes me as a curious intervention. I would like to make a remark or two on this matter, if I may. Mr Elliot was not here, so he is operating from whatever he reads from Hansard or whatever, and I would like to make a remark that I do not want deducted from their time. If people will accept that as a point of order and add it on—and we will be a bit late—I could be as quick as possible.

The Chair: Are you talking at four o'clock or are you talking at six?

Mr Reville: I am talking at about quarter to four, right now.

The Chair: This is a 30-minute presentation, because it is an association. That is why I am giving you the two options, four and six.

Mr Reville: I would like to do it now, because I have been frustrated, as perhaps other members of the committee have been, that the times have been so tightly scheduled and the deputations have had so much to say in the time allotted to them that sometimes impressions have been left that I do not think are quite accurate. I think it serves the committee best if people walk away from here feeling that they have had a chance to say something and a chance to go away with information they did not have before they came, which is why, seeing that I moved this amendment, I might be able to enlighten those members of the committee who were not here.

If I can provide some information that perhaps Dr Cunningham and Dr Tuck do not know, I indeed did talk to the OHA prior to moving my amendment, as I do frequently, because in the

brief that it presented to us it suggested that the bill might be amended to deal with some concerns in diagnostic radiology. You probably did not know that I did that, but in fact I did do that.

During the hearings and some months prior to the hearings, I asked Ministry of Health officials for information about the growth of billings in diagnostic radiology and other diagnostic services, which I had here at the committee and said could be available to any member of the committee who wanted to look at it. I subsequently asked the Ministry of Health to prepare some data on the question, which it provided to the committee.

In fact, when we had finished our public hearings, early on in the clause-by-clause I indicated to the committee that I was interested in moving an amendment in respect to diagnostic radiology before the amendments were complete and that I wanted some guidance from the committee as to how to achieve the effect the committee would have desired if that were its wish.

That was how it developed. I did get advice from both the Ministry of Health and legislative counsel on how to draft the amendment that I presented. That in fact is the way I saw the thing unfold, and what you call accusations that were made—people who have sat on committees for a while know that various things get said in committee, and it is totally appropriate for people to say whatever they feel like saying. The fact of the matter is that I did move the amendment and I did get information from the Ministry of Health and legislative counsel on how to achieve what I desired to achieve and at the end of the day the committee approved it.

So that is the story. I am sorry for that intervention, but it might help.

The Chair: I thank Mr Reville. I appreciate your clarity. I guess we will go back to the questioning.

Mrs Cunningham: Dr Tuck, on page 4 you are talking about some hospitals not being able to respond to the need if in fact the private clinics were not there and you state that private clinics are essential to meet the volume of the testing required. We have also heard that a number of times throughout the hearings.

I have a couple of questions. How can the hospitals respond to the need in the community, in two ways: If the technical fee is eliminated, what would you expect in its place so that you can maintain your budgets?

I am aware of how you replace equipment and your long-term plans. I have talked to the hospitals in London about this in the last couple of weeks and they really do require the same level of support and they do not want the same level with four per cent added on, so I am wondering what you expect instead of the T. What are you recommending to the government there so that you can maintain that?

The other part is that if in fact the radiologists are correct in saying that there will not be as many clinics—and they said that rather loudly, I think, and I, in representing the public, have to take them seriously—will the hospitals be able to meet the demands for the services to patients, given the fact that we have not had a response to the question of budgets, not to this point in time, at least I have not?

Dr Tuck: To the first question, in terms of the financing it is quite clear that the hospitals will need, if one were to transfer from the present system to a new system overnight, the hospitals will clearly need, as the diagnostic facilities clinics will need, a sum of money to continue, as you say, to replace equipment and similar matters.

I think our position is that we are not in the business of writing regulations, but clearly we would urge the Ministry of Health to come up with a form of regulation which would address that issue; and I think that since we are moving to a type of funding where the hospitals will get paid in various measured, weighted ways for what they do, it should be possible to find a system which compensates the hospitals adequately for their diagnostic facilities.

On the second issue, I come back to the matter of need. It is quite clear that there may well be situations in communities where a hospital alone cannot provide the diagnostic facilities which the people of those communities need, and that, I think, is the test one must apply. If the hospitals cannot do it, somebody else must.

The converse of that also applies, that if there is a duplication of facilities in the community and money is not being properly spent, then that matter should be addressed as well.

Mrs Cunningham: One of the witnesses from Norfolk—I am not sure whether you remember that particular witness. Of course, it is disturbing to me to see that they feel there is some kind of a competition out there when we are all supposed to work together. I am not being critical of anyone here, I am trying to find a solution and I thought one of the solutions the radiologists presented before the committee was—I think they

described an eight-point plan. Are you familiar with that?

Dr Tuck: No.

Mrs Cunningham: It was the Ontario Association of Radiologists. They were looking at an eight-point plan for meaningful discussions by all groups as an alternative to this bill, to solve problems, but if you have not seen it or looked at it, then I cannot really ask you what you think of it.

Dr Tuck: I have not, and I wish I had, because it seems to me that there have to be discussions at some level, whether they be local or provincial, to try to address the problems that will arise under this bill.

Mrs Cunningham: They were really underlining a co-operative approach, and they underlined your particular group as being a key ingredient to that approach and one that they would pinpoint as being very important. So perhaps you could do that.

1550

Dr Tuck: I am glad to hear that.

The Chair: I will make sure to give a copy of that brief to Dr Tuck.

Dr Tuck: Thank you. But I can say very generally that the hospitals individually and collectively are committed to working with the physicians. It clearly is impossible to think of a system in which that is not the case. And whether it be between our association and other associations or at the local level around the hospital, these things must be worked out to everybody's satisfaction, if it can be so.

Mr Eves: I have a couple of questions, actually one that Mrs Cunningham has just touched on. When the Ontario Association of Radiologists was here last week it presented an eight-point plan to the committee which, I understand, you will receive a copy of. They were suggesting that there was a need for regulation and quality assurance, but it would perhaps best be done in this instance outside of Bill 147, as Bill 147 was originally going to apply to some dozen to two dozen at the most, I think it is safe to say, grandfathered facilities. Now we find some 1,800 clinics, by the ministry's own figures last week, that would now come under a bill that was originally designed to handle perhaps a dozen. The OAR was suggesting that other methods outside of the bill, such as were suggested in its eight-point plan, may be a more appropriate way to address those issues. Dr MacMillan responded, when I asked him the same question, that in his opinion this could be

accomplished either inside or outside of Bill 147. What is your opinion?

Dr Tuck: Well, I repeat, I have not seen the brief you speak to. If it was delivered to the association last week, we were in the middle of our convention and therefore did not have the time to read it. But as a general principle, it is not our job as an association to argue that these things should be dealt with within or without the bill in question. We believe they should be dealt with, and it is surely the legislator's job to decide how that should best be done.

Mr Eves: I guess one question that I have in the back of my mind is, if we are going to include radiology clinics in this bill, what about other health facilities, such as blood labs? Should they not be included? We can take this from what was originally intended by the ministry to cover a dozen to two dozen clinics and we can end up with literally thousands, tens of thousands of facilities that we are now going to try to jam into a bill that was originally intended, by the ministry's own admission, to cover a dozen.

I have a bit of a problem with that, unless the legislation was drafted and designed to meet those needs from the outset. I think trying to come along in a haphazard fashion afterwards and trying to tack on 33 amendments initially, and then another 28 during committee, and now we are looking at perhaps tacking some more on at the last minute, is a very haphazard way to plan a health care system, let alone a piece of legislation.

Would you agree or disagree that there are other health facilities that could possibly be included and not just radiology?

Dr Tuck: I think I would have to distinguish between planning the health care system and planning the legislation which governs it, one of which I think I might understand and the second of which I do not. I must come back merely to the brief that we have presented, which states that in our opinion unnecessary duplication results in the wasteful spending of public funds in a health care system which is short of those funds, and therefore we would argue for anything which leads to a more efficient use of the taxpayers' money. But I do not think I can comment on the legislation which would govern that, since that is not my field.

Mrs LeBourdais: Dr Tuck, I had a doctor in my constituency office this past Friday, and one of the areas of discussion that we looked into was the competition that would exist, particularly in small towns, between a hospital and a private diagnostic facility. I said at the time that if I were

running that hospital, it would seem to me that priority should be given by the doctors in that hospital to using the diagnostic facilities of that hospital rather than going outside unless the hospital could not meet the demand.

I am just wondering if you would care to comment for me as to what degree you feel that would either exist or does exist at present, and what pressure the board of that hospital could put on its own doctors to strictly use the facilities of that hospital rather than of a private diagnostic service.

Dr Tuck: I will perhaps take the latter part of your question first. I do not think that the hospital boards should be in the position of putting any pressure on physicians to use the hospital facilities other than those, for the obvious reasons, which will accredit the physicians themselves. It is not, surely, the job of the boards to control the way in which patient flow is directed by the physicians.

But the point you are making as to whether a hospital and a clinic in general can work together collaboratively, which I think is the underlying theme of your question, is one that I would say we support. There must be collaboration. If the demand for services is such as to justify a hospital diagnostic facility and a private clinic outside, then that, I think, meets the test of need.

Mrs LeBourdais: But if there was to be a loss of revenue because of diagnostic needs going outside the hospital rather than staying in—perhaps I am incorrect in saying the board of directors; anyone within the hospital hierarchy might exert pressure to use the facilities of the hospital in order to make sure that revenue stays within the system there—do you not think that would be a natural outflow? Certainly as a businessperson one would look at it in that sense.

Dr Tuck: I have a little difficulty with that. I repeat that I do not think it is the position of the board of trustees, the board of governors or the hospital—

Mrs LeBourdais: But of anybody, a senior medical staff or whoever.

Dr Tuck: I hope the people who are concerned with running the hospital's administration are responsive to the needs of the board, not to their own particular agenda, and so I have some difficulty in envisaging a situation in which that would come to pass. I hope it is the proper choice and the proper use of facilities that we are all after.

Mrs LeBourdais: Perhaps let me come down the hierarchy then. Would it not make sense for a

doctor, of choice, to give his or her hospital preference before using an outside facility?

Dr Tuck: If he or she thinks that is appropriate, yes. But I do not believe there are any pressures that the hospital can or should apply to make that happen if it is, for some reason, medically incorrect.

Mrs LeBourdais: You do not just feel that there would be natural pressures, because of the revenue that would help to offset hospital costs all through the system?

Dr Tuck: I think one could equally well argue the opposite case of people taking the work outside for revenue-directed purposes. I hope that is not the issue, though it might well be in some cases.

Mr Reville: I had a chat, as you might expect, with the Ontario Association of Radiologists today, who are understandably concerned about the impact of this legislation on radiology everywhere in the province, not just private, but within hospitals and universities, teaching hospitals and whatnot.

One of their recommendations is that a six-week study on the impact of this amendment be done and that the stake holders that should be involved would include the OAR, the OMA, the OHA, the Ministry of Health and the College of Physicians and Surgeons of Ontario. If such a study were done, or if an implementation committee in respect of this amendment and the development of regulations pertaining to the amendment were to be established, would you serve on it? Either one or both?

Dr Tuck: Certainly our association would be very pleased to take part in such a study. My only reservation is not whether the study should be carried out, but whether it should be carried out at the provincial level or at some localized regional or community level. Because the problems, I suspect, are as much local as they are province-wide.

Mr Reville: Oh, dear. Does this mean that you do not have faith in the district health council system? I should not ask you that question. I should tell you that I do not have faith in it.

Dr Tuck: I thought I was saying that perhaps it should be done at the regional or area level, area or district. I think I am trying to say that it should be done locally, that you would come up with the local problems more quickly that way than with a study across the province, although our association and its member hospitals, I am sure, would be happy to take part at either level.

Mr Reville: So you would recommend a number of impact studies done at the local or regional level with the parties I have recommended being involved.

Dr Tuck: I think I would like some thought to be given to whether that is not a more efficient way of doing it than doing a province-wide study.

Mr Reville: Holy moly. Well, that is an interesting idea. Thank you.

1600

The Chair: Are there any further questions? Thank you very much, Dr Tuck, for answering some rather challenging questions. For the Ontario Medical Association, please, Dr Anna Day. This is the section of respiratory diseases from the OMA. You may begin.

ONTARIO MEDICAL ASSOCIATION

Dr Day: If I may introduce Dr Roger Haddon, he is the vice-chairman of our section. This is probably the only presentation you will be getting regarding pulmonary function studies. We have been given 20 minutes and we will try to keep our submission fairly short and give you an opportunity to ask the questions you feel are necessary to clarify our position.

I am pleased to have the opportunity to appear before these hearings in order to voice to you the concerns of the respiratory physicians of Ontario regarding the amendment to Bill 147. My name is Anna Day and I am the chairman of the section on respiratory diseases of the Ontario Medical Association. I am a full-time respirologist at the University of Toronto and practise out of the Mount Sinai Hospital. There are currently 367 members of this section and the majority of our members are respirologists or internists with a major interest in respiratory diseases.

In order to appreciate the potential impact of the amendment to Bill 147 on our practices and on our patients, it is probably useful to you to have some idea of what respirologists do, what is involved in pulmonary function testing and why accessibility to pulmonary function facilities is so crucial to our ability to provide high-quality health care.

Respirologists are subspecialists who have taken further training in respiratory medicine after having been trained as specialists in internal medicine. Respirologists in Ontario are involved in inpatient and outpatient diagnosis and management of pulmonary problems, such as asthma; chronic obstructive lung disease, which includes emphysema and chronic bronchitis; lung cancer; pulmonary infections; AIDS, and other condi-

tions which involve the respiratory system. Patients are referred to us by their family physicians or other specialists.

Appropriate assessment and management of the patient with pulmonary problems requires pulmonary function studies in most cases. Pulmonary function assessment may include tests which require the patient to breathe as directed into a tube connected to a measuring device, for example—spirometry—or more complex tests which require large and expensive pieces of equipment, well-trained technicians to administer the tests and keep the equipment calibrated and both computers and appropriately trained physicians to interpret the results.

The pulmonary function study performed most often is spirometry. In the past five to 10 years, computerization of the equipment, recommendations by the Canadian Thoracic Society for use of this type of testing to screen for and follow patients with pulmonary disease and the training primarily of family physicians to perform and interpret spirometry has resulted in an increased use for this test. The six-month 1988 data from OHIP are that approximately 1,750 physicians out of over 20,000 in Ontario billed for this test.

More complex pulmonary function studies are usually performed in both hospital and non-hospital-based laboratories, with the most complex and invasive usually being performed in teaching hospitals and academic centres. Since more complex types of studies are usually required, supervised and interpreted by respirologists, they become involved in the establishment and management of most pulmonary function laboratories both in and out of hospitals.

Respirologists have been setting up pulmonary function laboratories outside hospitals for a number of reasons. Some local hospitals have not been able to meet the needs of patients in terms of accessibility to these studies because of a lack of funding for setting up of laboratories, upgrading of equipment or technicians' salaries. Respirologists have established onsite pulmonary function laboratories to allow for more rapid assessment of these patients. Many of the patients assessed and managed by respirologists have significant breathing difficulties and an onsite pulmonary function facility is of much more convenience or essential for those disabled patients who would otherwise have to travel to another location for their testing or not be tested at all and therefore be incompletely assessed.

The section on respiratory diseases has become aware in the past few years of the issue of quality assurance in terms of laboratory facilities

and physician performance. Pulmonary function testing is not inherently dangerous and therefore there has never been the establishment of legislation, such as the Healing Arts Radiation Protection Act, to deal with the issue of quality assurance in terms of equipment and technologists. There are 1987 guidelines established by the American and Canadian thoracic societies regarding the maintenance, calibration and proper performance of these tests, and guidelines were also established by the Department of National Health and Welfare in 1982.

The respiratory section, however, has recognized the need for laboratory proficiency testing and has been in the process of establishing what was envisioned as a voluntary program over the past two and a half years. This is well documented in the minutes of our section. The robots required to perform this testing have been developed and the plan has been to introduce this testing in 1990. We would of course welcome a co-operative expansion of this program.

To our knowledge, the issue of physician performance has been the responsibility of the College of Physicians and Surgeons of Ontario, which has been given the responsibility by the Health Disciplines Act to perform peer review assessment of physicians' practices. In doing these assessments, the college also has the right and obligation to deal with any concerns regarding conflict of interest.

The issue of utilization of health services is one that has become of critical importance in the last decade as the increased demands for service have caused a tremendous increase in the costs of health care. However, we do not believe that the proper forum for decisions regarding utilization and the allocation of health care dollars should be made through legislation where the ultimate decision may lie unilaterally with political forces. These decisions should be made through a variety of mechanisms which allow for input from all concerned parties, such as the Scott Task Force on the Use and Provision of Medical Services.

The section on respiratory diseases is even more concerned about the potential harm of the amendment to Bill 147. If it remains and is proclaimed as it stands, the practices and/or pulmonary function laboratories of approximately 1,750 physicians now billing for at least some component in the pulmonary function fee schedule could become independent health facilities.

Concerns regarding the bureaucracy involved in applying for and maintaining a licence, the capital expenditure required to set up a pulmo-

nary function facility without a firm guarantee that it could be paid off and concerns about being declared an independent health facility, with all the other implications of this, would have a negative impact on the maintenance and establishment of out-of-hospital facilities.

On the other hand, those involved in hospital-based pulmonary function laboratories tell us that they are already functioning at full capacity in most cases and that they could not accommodate an increase in patient load without expanded facilities. With the constraints in hospital funding and spending, it is unlikely that adequate funds to meet the needs for expanded facilities would be available. Patients would end up with a longer wait for complete pulmonary assessment, visits to institutions which were previously unnecessary at an increased cost to them in terms of time and, especially for the disabled, difficulty. There would inevitably be a reduction in the quality of health care available to these patients.

The section on respiratory diseases does not feel that the amendment to Bill 147 is required to deal with the issues of quality assurance, physician performance or self-referral since the mechanisms which could be used for dealing with these issues are already in place. The tremendously difficult issue of utilization requires discussion and consensus, not this legislation. We believe that all these concerns need to be addressed quickly, efficiently and effectively, but we are convinced that there are better forums for dealing with these issues without the adverse impact of this amendment on the quality and accessibility of health care in Ontario.

Mr Reville: Dr Day, I appreciate your presentation and also the information you provided to me when we met the other day. There is some new information today, that you believe there are 1,750 physicians billing for spirometry.

Dr Day: Billing for at least some component, yes.

Mr Reville: Some pulmonary function study or other. That contemplates a reach of the legislation that I will confess was not contemplated at the time the amendment was put. Do you have any information at all, or any inkling, about the year-over-year changes in utilization for pulmonary function studies?

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Dr Day: I have some information. The pulmonary function studies, other than spirometry, which I mentioned before, or flow volume, have remained fairly stable over the years. It is

the area of spirometry or flow volume that I know has been of concern to the ministry.

Mr Reville: Barometry?

Dr Day: Spirometry, flow volume curves. If you have the book, J-301 and J-304.

Mr Reville: I have it.

Dr Day: I do not think we really have to get into details. There has been an increase. Some of this increase, as I mention in my brief, is due to the fact that this type of testing became accessible to physicians because of the development of the equipment to do it. Guidelines were established saying that these tests should be done in certain patients who were at risk, both for screening in the physician's office and on an annual basis. For example, when I look at my statistics, there was a big jump between 1984 and 1987 in utilization of these tests and there has been, again, an increase.

Mr Reville: But do you see that as a result of technology being available so that it could be on site?

Dr Day: I think there is a host of reasons, but certainly the fact that there are recommendations that it should be done and the training of physicians to do it have combined to do that.

Mr Reville: Is a spirometer an inexpensive piece of equipment?

Dr Day: A flow volume curve is a piece of equipment that is purchased, depending on the type, for \$5,000 or more.

Mr Reville: How long would it last?

Dr Day: Until someone develops a better one.

Mr Reville: How often does that happen?

Dr Day: There are also operating funds involved in the fact that usually there is a technician or someone trained doing it, and there are disposable mouthpieces—

Mr Reville: A respiratory technologist?

Dr Day: It depends whether it is part of a full pulmonary function laboratory or in an individual doctor's—

Mr Reville: Some kind of disposable mouthpiece that you throw away each time?

Dr Day: Mouthpieces, papers, things like that.

Mr Reville: Maybe I can ask the minister a question. In trying to implement an amendment to a piece of legislation that involves so many more locations than had been contemplated, I assume the ministry has several options available to it. One would be approaching it by regulation, one by policy and one by administrative procedure. The worry, of course, is that if you are

interested in quality control, it is a different thing to do quality control for 20 operations than it is for 1,750. I just wondered if either of the officials, or perhaps the minister, would comment on that and help the committee out.

Hon Mrs Caplan: Yes, I would be pleased to respond. At the time when the amendment was proposed and accepted, we acknowledged that it provided a challenge as far as the administrative implementation. I have asked the ministry, and I asked at that time for a determination of what would be involved. I have been assured that in fact, while challenging, the administrative implementation can be smooth, we believe. Particularly the commitment that we made to consult actively with the Ontario Medical Association, physicians across the province, the Ontario Hospital Association and the College of Physicians and Surgeons of Ontario would ensure smooth and appropriate implementation of this legislation.

Mr Reville: Further, Dr Day has indicated that the Ontario Thoracic Society has developed some guidelines for testing the proficiency of the lab work. Would the ministry invite that section of the OMA to submit these self-developed guidelines so that the regulations can be appropriate in terms of the work that has already been done?

Hon Mrs Caplan: As I have said, if possible, we would like through the implementation to not only work together but consult with the Ontario Medical Association, the college of physicians and surgeons, which would have the role of ensuring the quality standard within the facility as part of the assessment process, the Ontario Hospital Association and individual groups of physicians which could best advise us on the most appropriate, but to ensure that the provisions of this bill were resulting in appropriateness and fairness to those providing services in the province. I think that these are the administrative details of implementation, which I am quite satisfied and have been assured by ministry officials can result from the kind of co-operative approach that we always prefer to take.

Mr Reville: I think what that suggests, though, is that there must be representation from the respiratory disease section as well as other parts of the OMA so that the concerns of Dr Day and her fellow respirologists can be addressed as well.

Mr Keyes: With our main goal being the quality assurance, in working with all of the people in these clinics, both onsite and offsite,

and your recognition that there has been a very significant increase in the volume of testing in some aspects of the pulmonary function testing over the past two years, do you see any problem, perhaps with inadequately trained physicians who perform the pulmonary function tests?

Dr Day: I think we are always concerned about those types of issues. Talking about the more complex tests that are done both in hospital and out of hospital, in the large laboratories, the same physicians who run the in-hospital laboratories may run their own onsite laboratory. Certainly if they can do quality assurance and are responsible for maintaining the quality of the hospital laboratories, then I would not think that they would have any other type of level or standard outside of the hospital.

Again, this is a unique situation where you have physicians who run the laboratories in the hospitals, and there are hospital regulations and accreditations that require quality assurance. These same physicians know how to do it and are doing it outside.

Mr Keyes: As a supplementary, what about those physicians who do not work inside the hospitals and perform it but are running their own in their own clinics? Do you see any possible cause for concern there or not?

Dr Day: There is always the potential for concern. Again, the equipment these physicians purchase has to follow a standard. It is usually an American Thoracic Society standard, because most of the equipment is produced in the United States. The equipment is already set up to accept certain types of information and not accept certain other types of information, so there is some assurance from the equipment itself.

There is always the concern, but again, a program such as the CPSO going in to look at a general practitioner's practice, let's say, would involve looking at these kinds of tests and seeing if they are being done properly. I would hope we are training our physicians appropriately.

Mr Keyes: I am not sure if you are actively participating in your career and I was just wondering, have you had the opportunity of having had that review by CPSO in your career?

Dr Day: I have not, but I have had colleagues who have. They are assessing respirologists out there too.

Mrs Cunningham: I am wondering about your observations as I ask my question, which has something to do with quality assurance but more with quality control, and I look at them as being quite different. It is on quality assurance,

and I want you to correct me if I am wrong or to give me your views. In looking at the briefs and listening to the witnesses, I notice they have told us that the HARP act is what we need for quality assurance. I would like you to respond to that if you can.

I think what we are really looking at now, in working together and providing services for the community, either by hospitals or clinics, given what you have told us, is some kind of control of what we give the service to, whether it is the hospital or the clinic, and whether there is abuse and those kinds of things.

In listening to the different presentations, I am somewhat confused and find we are being somewhat divisive. You have told us that at least in your particular area, the hospitals are already functioning at full capacity in most cases, and we have heard that from many groups. We are not hearing, and certainly the ministry can correct me if I am wrong, of that being a problem. It appears to me that if people do close down clinics that could be established or controlled by this bill, the government is not particularly concerned because it is not concerned about the statement that you have just made.

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I guess my point is this: If we do not need this particular amendment, and you are telling us that we do not—and I am not sure you are, but I think you are—would you think that in looking at this quality control, a study of utilization with regard to radiology across the province would be in order? How would you see us best dealing with this question? Obviously, I think we have got somewhat a divided community out there with regard to what the government is trying to do and what can be accomplished by this bill.

Dr Day: I think you mentioned this in terms of pulmonary function, not radiology, because we do function very differently.

Mrs Cunningham: All right.

Dr Day: I think you need a committee to sit down and, say, look over the recommendations for when pulmonary function studies are appropriate. As I say, there are guidelines from the American Thoracic Society that have been adopted by the Canadian Thoracic Society. Then you need to take a look at the population and the needs of the population, because, as I pointed out, our population is a little bit different. They need accessibility in terms of physical accessibility. When you have an asthmatic who is deteriorating, you are not going to say: "Just go down to the hospital that's 10 miles down the

road. Park your car, go out there, get a breathing test and come back to me." Doing pulmonary function studies is very essential to the type of job that a respirologist does. Then you go ahead and decide. Once you have an idea of who should have it and how many people need it, you can set up guidelines for utilization.

Mrs Cunningham: Do you think that has been done to this point in time? Do you think we know what we need when it comes to utilization in this province? You are working in the field. I do not know.

Dr Day: From speaking to my colleagues, the feeling is that when there is a need it is usually addressed by an outside facility opening up. For example, I talked to a colleague in Kitchener-Waterloo and I said to her, "Why did you set up a pulmonary function facility?" She said, "Because there was a two-month wait at our hospital and my patients couldn't wait two months to have a test done and therefore I had to open up a facility in order to give my patients adequate care."

Usually what happens, at least in pulmonary function, is that where there is perceived to be a need—usually by a respirologist, because we are the ones who use these tests the most—and it is not being met by the local facility, then an outside facility is set up. It is almost a marketplace type of situation.

Mrs Cunningham: If we did not have the outside facility, what would have to happen at your hospital in order to meet the needs of the patients? What would have to happen at the hospital you work at?

Dr Day: I asked the director of our laboratory what would happen and he said that as far as he was concerned, the laboratory was now functioning efficiently, effectively and at full capacity and it could not handle an increased load without extra funding for technicians and equipment.

The Chair: Thank you very much, Dr Day. May I have the Ontario Medical Association's section on nuclear medicine, please, Dr Greyson?

Dr Greyson: Thank you very much for this opportunity to address you as a representative of the nuclear physicians of Ontario. In my submission, the first page outlines my various professional activities, which include academic, hospital and private practice of nuclear medicine as well as activities related to technologist training and registration. These diverse activities give me a broad overview of the role of diagnostic radiology and nuclear medicine and

the complementary roles and interrelationships between hospitals and diagnostic clinics.

From my perspective, I do not believe that extending Bill 147 to include the licensing of diagnostic imaging facilities is necessary or desirable in order to have an optimal diagnostic imaging service in the province.

First, I would like to address the need to legislate in order to achieve quality assurance aspects. An important goal of the Independent Facilities Act is to provide access to the highest quality of health care services, with the assurance that these facilities comply with established standards of performance. We support this aim.

You have heard suggestions from some sources that quality assurance outside of hospitals is inferior. It would be misleading to this committee and alarming to the public if there were a perception that diagnostic imaging at a private clinic is at present more hazardous or less competent than that performed in a hospital. The same standards apply and identical regulatory mechanisms are in place, whether in a tertiary care hospital or in a private nuclear medicine or X-ray office. There is no need for another layer of legislation to achieve the laudable objective of a quality assurance program.

Of all medical specialties, nuclear medicine is already the most heavily regulated. In addition to the usual medical licensing requirements and specialty certification, a nuclear physician's place of practice and the tools of his trade require additional licensing by the Atomic Energy Control Board. The physician named on the licence application as the individual responsible for the medical aspects of the nuclear medicine facility must be approved by the Ontario tripartite nuclear medicine advisory committee.

This committee is comprised of representatives of the Ministry of Health, nominees from the Ontario Medical Association and is chaired by the College of Physicians and Surgeons of Ontario. Each time a licence is renewed, which occurs at two-year intervals, or an amendment to the licence is sought, the tripartite committee can review the qualifications and the practice profile of the applicant. This committee is not a rubber stamp and licences have been refused on the basis that the tripartite committee had concern about the individual's training or that he was unable to supervise the facility appropriately.

Guidelines for a physician in charge of a nuclear medicine service have been defined by the college of physicians and surgeons, which I have distributed. These require that the physician nominated on the licence assume the responsibility

for all aspects of investigations and procedures offered by the service, including the establishment and maintenance of an appropriate safe environment and the establishment and supervision of quality control practices.

The training requirements for a responsible physician in a private nuclear medicine office are more stringent than those permitted in a hospital. Nuclear physicians responsible for a private office require certification by the Royal College of Physicians and Surgeons of Canada, while in a hospital facility only one year's full-time training in nuclear medicine is acceptable.

The radioisotope licence application requires a considerable amount of additional information documenting all aspects of radioactive material control, disposal, monitoring and safety procedures for the patients, staff and community. There is no distinction made in these safety requirements for a hospital-based or a private practice nuclear medicine office.

In its inspection program, the Atomic Energy Control Board makes no distinction in the rigidity of its radiation safety inspection standards between a hospital-based facility and a private nuclear medicine office. I have given you a reference at the Atomic Energy Control Board.

The Atomic Energy Control Act permits the revocation of the licence and other penalties for any breach of the terms and conditions of the licence.

The health protection branch of the Department of National Health and Welfare has published guidelines for radiopharmaceutical quality assurance in nuclear medicine. These require that each hospital and nuclear medicine clinic establish and perform specified radiopharmaceutical quality assurance procedures. All documentation is subject to inspection by the bureau of radiation and medical devices. There is no distinction made between the quality assurance requirements in a hospital and a private nuclear medicine facility. Again, I have given you a reference.

As physicians licensed by the College of Physicians and Surgeons of Ontario, we are subject to the conditions of the Health Disciplines Act. Radiologists have co-operated with the college in establishing a peer review program specific for radiologists. This is ongoing. The laboratory proficiency testing program applies to nuclear medicine clinics performing radioimmunoassays.

Radiologists and nuclear medicine physicians are committed to the concept that the practice of diagnostic imaging must be provided to all

patients in a safe environment, with competent and ethical practices. We offer our full support, co-operation and advice to any of our regulating agencies in order to maintain the highest standards of practice.

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If preference for licensing is awarded to not-for-profit facilities, as suggested by the act, we anticipate the spectre of medicine being practised by the lowest bidder, using older equipment and diagnostic shortcuts. This is surely not the intention of the Ministry of Health, but the result will surely follow. The once highly regarded quality of medical care in Ontario may deteriorate.

I now would like to look at the matter of accessibility. The original intent of the Independent Health Facilities Act was to improve community-based health care and to widen the accessibility of various treatments and procedures not generally available outside of hospitals. However, by the precipitous addition to the scope of the bill of several hundred diagnostic imaging facilities already in existence, the reverse effect will likely ensue for facilities of this new component with the ultimate deterioration in accessibility of medical service by attrition of the numbers of those clinics.

In the Ontario Hospital Association brief to this committee, you heard a proposal to use this legislation to restrict competition for outpatient services. With my own practice mix, both in and out of hospital, I perceive that community needs will not be served if the out-of-hospital option is suppressed. Existing hospital facilities may not be able to accommodate the demands of more outpatients in addition to already burdened inpatient needs. Hospitals must give priority to acute care. Even if extra funding were available for new equipment needed for an expanded outpatient role, most hospitals do not have space to expand their imaging facilities.

The Minister of Health has stated that with the expansion of community services institutions will be free to direct their expert care to those most in need with substantial savings and efficiencies in the hospital sector. We believe that there should be no competition between hospitals and the private sector in diagnostic facilities; each has an important role in the health care matrix. The hospital is for patients with severe illness requiring complex procedures and invasive techniques. The community-based non-hospital clinic is for elective outpatient services which can be provided in a convenient location and in a structure that is less expensive to

maintain than a hospital. Having both options will produce economy and accessibility.

The existence of an alternative to hospital-based facilities is important to the citizens of Ontario, many of whom prefer the less stressful environment of a clinic or cannot travel to a hospital for tests. Private clinics have developed because they frequently provide services that are more prompt or more comprehensive than those in a hospital. The loss of a low-cost out-of-hospital clinic may provide gradual attrition of services as hospital budgets are needed for acute patient care.

There is an irresistible concern on the part of the operators of private diagnostic facilities that they are in jeopardy under the terms of Bill 147. The high-technology equipment currently required for sophisticated, noninvasive diagnoses is extremely expensive. A nuclear medicine or radiology office requires a capital expenditure of at least \$250,000 to \$300,000, which is currently financed by the physician himself. All operating costs, including materials, employees' salaries, rents, etc., are derived from the technical component, whereas in hospitals they come out of a ministry-provided global budget in competition with other operating costs such as nursing salaries, cardiac monitors, medication, etc.

If these private facilities are operating on the basis of a five-year licence which may be arbitrarily removed, insecurity will inhibit the development of new locations and the acquisition or upgrading of equipment. Physicians and landlords would be hesitant to enter into a new leasing arrangement and clinic employees could not be guaranteed permanent job situations. Even if a community needs a facility, the private sector would not likely risk the investment. Experience shows us that bureaucratic decision-making is slow to respond to the need.

Private clinics have made a significant contribution to the welfare of citizens of Ontario by providing services in communities where they would not otherwise be available. One typical example is the establishment of a nuclear medicine clinic in Timmins, to which I consult, which had no radioisotopic diagnostic service until six years ago. Patients had to travel to Sudbury or North Bay and hospital patients underwent expensive and hazardous air evacuation for emergency diagnosis.

Without private offices such as these, the standard of care would be very nonuniform across the province. Diagnosis of critical diseases, such as pulmonary embolism or coronary

artery disease, or the search for metastatic tumour spread would have to be deferred.

A delay in diagnosis may result in progression of disease, necessitating more expensive and complex diagnostic and therapeutic manoeuvres, with prolonged hospital stay and increased costs. In many communities, private clinics give hospital inpatients access to contemporary diagnosis by charging the hospitals on a fee-for-service basis. This saves the hospital the expense of the capital budget outlay and ongoing operating costs.

The recent growth in the use of private imaging clinics is an indication that in-hospital services are not meeting the needs of referring physicians and patients. Even in urban centres, the demands on hospital nuclear medicine services by inpatients result in prolonged waiting delays for outpatients. The nonhospital services are an important component of the broad-based community health network envisioned by the act.

In its future role, the district health council will determine the existence of a facility by allocation of expenditures from its funding envelope. The urgent financial demands of hospital acute care may take precedence over the less compelling but necessary routine imaging required for early diagnosis or to maintain a comprehensive quality health care system. Without the private capital to introduce these facilities into the community, it is likely that the service will not be available.

The criteria for existence of these private offices should depend on the qualifications of the physicians, the quality of the service performed and the quantity of service needed by the community. As long as a facility is providing a needed service in a safe, competent fashion, as determined by existing peer review and quality assurance mechanisms, the existence of the facility should not be placed in jeopardy by the proposed short-term licences.

In conclusion, the section on nuclear medicine requests that the standing committee on social development recommend the withdrawal of the section 7 amendment on the following bases:

1. Mechanisms for licensing of nuclear medicine and radiology facilities already exist at provincial and federal levels, with review and inspection of the facilities by existing regulatory bodies. Bill 147 will add yet another inspection process and another level of bureaucracy to an already regulated medical practice.

2. Quality assurance and peer review programs already exist and can be augmented without legislation.

The Chair: Dr Greyson, do you have anything new in these recommendations that has not been included in your brief? Simply, I have two requests for questioners and we only have five minutes left in your presentation.

Dr Greyson: Not particularly, although I do talk a little bit about social impact and economics.

The Chair: I would like then that which is new in these.

Dr Greyson: That would be 7.

The Chair: Okay, if you would like to read in for the record the things that are new, I would like to try to give the committee members a chance to have a couple of questions.

Dr Greyson: Certainly. Additional considerations should be the economic effects to local companies selling equipment and services to diagnostic facilities and the potential unemployment of thousands of laid-off technologists and other staff if private clinics close. The reduced numbers of technologists' employment opportunities will affect enrolment at educational institutions, and this is already having a mediating effect at the Toronto Institute of Medical Technology.

Possibly the rest will come up in questions. I thank you very much for this opportunity.

The Chair: I ask for co-operation from the three people who want to ask questions, about two or three minutes each at the most.

Mr Keyes: Just quickly, I thought it might be appropriate for Mr Sharpe to go back—some members may not have been here—to look at the actual role that HARP and the AECB play with these facilities. There seems to be some confusion in that it is considered they provide quality assurance and I just want to have that clarified again, if that is correct, that it is not really quality assurance, as we in the medical ministry talk of quality assurance, but rather the technical.

Mr Sharpe: Yes, I believe I said this last week, but it bears repeating because it is the same issue that was raised. There are two statutes that bear on this: the HARP legislation and the Atomic Energy Control Act. First, the provincial act: It is limited to quality assurance in regard to machinery and staffing. It more properly regulates the radiation technicians and medical physicists, the persons testing the equipment, regarding whether it meets proper safety standards, but does not address, and cannot, by the limitation of its regulation-making powers, regulate the quality assurance of the medical component.

As far as the Atomic Energy Control Act is concerned, it regulates the transportation and storage of isotopes. There is no regulation, either federally or provincially, of patients' safety in relation to nuclear medicine, except incidentally, where it relates to the transportation and storage of dangerous substances. And of course there is no public need component in the issuing of approvals or licences under either HARP or the Atomic Energy Control Act or its regulations.

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The Chair: Does that answer your question, Mr Keyes?

Mr Keyes: Because some members of the committee are not here and yet quite a bit was made about quality assurance's being already provided by the HARP legislation, etc, I just felt it should be clarified.

Dr Greyson: Actually, the HARP regulations do not impact on nuclear medicine. Our regulations are more at the federal level. But, for example, the quality assurance program that is required under radiopharmaceutical quality assurance does cover to a great extent patients' safety, because this mediates the safety of the materials injected directly into patients.

I would like to say that because we are a high-technology diagnostic modality, it is impossible to separate out the quality assurance of the technology from the quality assurance of the medical care. We do not deal directly with the patient on a hands-on basis, but we are looking at images that are produced by radiopharmaceuticals and by radioactive-detecting equipment.

Our quality assurance programs see that this aspect is of the highest standard. It is then the professional judgement to do the interpretation of the study, and at that point we would come under the purview of the college of physicians.

Mr Reville: Thank you, Dr Greyson, for a tightly argued brief. I do not agree with all your conclusions, mind you. You talk a lot about the quality assurance aspects under the alphabet soup of regulatory agencies, advisory committees and control boards, radiopharmaceutical quality assurance committees and whatnot, but you have not said a whole lot about how you handle utilization review in nuclear medicine. Do you have any comments to make? You do not seem to address that in your brief.

Dr Greyson: No, I do not have anything specific about that, because we are not a specialty that generates utilization; we are a specialty that responds to the needs of the physicians and the community and we do not really have much

control over what is required for the best patient care.

Mr Reville: What would you do if you were referred a patient, for whom you thought a test was unwarranted, for an iodine test of some kind?

Dr Greyson: Certainly that is individual utilization. I thought you were looking at the more global issue.

Mr Reville: You get little pieces of utilization that become global when you add them all together.

Dr Greyson: We do have very strict guidelines about the administration of radiopharmaceuticals to specific classes of patients, such as "pregnant," "nursing," "specific age," etc. We also can monitor whether or not the test ordered is in fact the test that is appropriate for the diagnosis, and this is part of our program.

Mr Reville: I am not talking about tests that are medically contraindicated. I am talking about tests that are safe to perform on people but that the people might not need. It would be great to have this information, but maybe you could get along without it.

Dr Greyson: Yes, I cannot presuppose a certified endocrinologist's request to do a radioiodine uptake in a patient. That is not my specialty; it is his specialty. I am trained to perform the tests with the most careful standards possible.

Mrs Cunningham: On quality control, to take it a little step further after my colleague's questioning, do you think that the section of this amendment, as you have looked at it, would solve the problems that have been raised? If one is talking about performance of tests that are not necessary in the eyes of a physician, or perhaps too many tests on an individual patient or a patient who may be travelling from physician to physician—which is a concern, I think, for all of us and what we are trying to do—given that challenge, will this particular amendment to Bill 147 help us with that challenge?

Dr Greyson: I do not see that it addresses the utilization. I think that there could be other nonlegislative mechanisms that could look at that, but I do not see that this will regulate utilization, except by restricting access.

Mrs Stoner: The concern of Bill 147 is really about the standard of care, in large measure, and I would like to know how you are monitored today and how is that actually done to assess standard of care across Ontario within your kinds of clinics?

Dr Greyson: Even in hospitals, medical quality assurance is a fairly new game. I work at St Michael's Hospital, which is a tertiary hospital. We are still at this time trying to establish within the medical quality assurance program how we can evaluate, for example, whether or not a test has been interpreted appropriately and so on. It is still very early to say that. The mechanism now is through the college of physicians.

Mrs Stoner: What you are saying is that there is a mechanism starting to be implemented in the hospitals, but what I asked is whether or not there is a system in place today for monitoring outside facilities.

Dr Greyson: No, there is not, but for the most part what we are looking at is the efficacy. Once we have looked at quality control or quality assurance of the technology, which is very well regulated, the intangible factor is the ability of the physician to make the appropriate diagnosis from the test that he is handed, and that is a very difficult thing to measure, even in the hospitals. For the most part, because we are certified physicians with credentials, one has to assume some degree of competence. The college of physicians is there.

Mrs Stoner: I guess that you would agree that the assumption that there needs to be that assessment within the hospital is also valid for any other facility?

Dr Greyson: Yes, certainly.

The Chair: There has been a request for one other small question. I do not want to grant any more questions on this presentation, but it does seem to be the first time we have had an opportunity on this particular area of medicine. If the committee is agreeable, but it is going to mean cutting somebody else back by five minutes. Do you want me to continue? Very short, then, Mrs LeBourdais. I do not like breaking these rules.

Mrs LeBourdais: Very briefly, I was just wondering, since most of your patients come from referral, under what circumstances does self-referral, particularly in a large city, come about?

Dr Greyson: I think there are two aspects of self-referral that we have to consider. One is the self-referral of a clinician who in fact is dual-certified—for example, in internal medicine or cardiology—and has consulting responsibilities in a nuclear medicine department. He then can self-refer in that sense.

There already are restrictions in the OHIP fee schedule on self-referral and physicians who have already seen a patient and have charged the consultation fee receive only 50 per cent of the professional component. So there is a financial disincentive for that aspect of self-referral.

The other aspect of self-referral is where physicians who are not involved in the practice of nuclear medicine may have financial interest in the diagnostic facility, but they may refer to the facility. They do not participate as a professional interpreting, but they may participate as a shareholder in the technical facility.

Mrs LeBourdais: Do the governing bodies within the field of radiology not see that as a potential conflict of interest?

Dr Greyson: You will have to ask the college. I do not think they do at the moment.

The Chair: Thank you very much, Dr Greyson. If I may go on to the Ontario Medical Association section of diagnostic radiology, please, Dr Davidson.

Dr Davidson: This submission is from the section of diagnostic radiology of the Ontario Medical Association and represents the views of more than 600 radiologists, practising both in hospitals and in community-based diagnostic clinics in Ontario. The executive of the section is grateful for this opportunity to present the opinions of experienced radiologists on Bill 147 and amendment 7.

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The brief will deal with three areas of concern to the ministry, which are set out in the summary sheet. The first is quality assurance and noninstitutional diagnostic imaging facilities. The second is accreditation, using current legislation. The third is cost containment.

Quality assurance can be defined as professional accountability for the provision of services of the highest calibre. As a result of initiatives of radiologists and the Ministry of Health, the Healing Arts Radiation Protection Act was introduced in 1980 and was revised in November 1984. The provisions of this act are mandatory for all radiologists practising in private clinics in Ontario, and I would stress that these are mandatory provisions.

In addition to specifying standards for departmental design and equipment, the act makes the appointment of a radiation protection officer mandatory in each facility. This radiation protection officer is responsible for quality assurance within the facility.

The Ontario Hospital Association and the Ontario Medical Association have published guidelines for quality assurance within hospital X-ray departments, of which I was a co-author, in 1984, and the ministry published comprehensive guidelines for interpretation of the Healing Arts Radiation Protection Act in 1987. These provisions and the X-ray inspection service of the Ministry of Health ensure that quality assurance in noninstitutional diagnostic facilities is of similar quality to that of the departments of medical imaging in hospitals.

I have put these booklets here to let you see the Healing Arts Radiation Protection Act and also the size of the guidelines that we follow in our departments.

During the past two years, there have been further initiatives for peer assessment from the Healing Arts Radiation Protection Commission, the section on diagnostic radiology of the OMA and the College of Physicians and Surgeons of Ontario. The focus of peer assessment is on noninstitutional diagnostic facilities and radiologists. The peer assessment program for radiologists by the Ontario college is mandatory under section 64a of the Health Disciplines Act and is ongoing. Review of all aspects of diagnostic imaging in noninstitutional facilities is by experienced radiologists. This review includes inspection of radiographs and quality of interpretation. Technical and professional aspects of ultrasound are included.

Radiologists are particularly anxious to preserve and maintain quality assurance in diagnostic ultrasound and, for this reason, in Hamilton have formulated guidelines for the practice of diagnostic ultrasound. This constitutes appendix I of this brief. Comprehensive recommendations for the provision of high-quality ultrasound services described are applicable throughout the province.

The members of the section feel that quality assurance is much too important to be left to personnel who are not adequately trained and qualified. The section therefore strongly recommends that the practice of diagnostic radiology be confined to MD physicians who have completed a four-year post-graduate training program and passed by examination the certification of fellowship of the Royal College of Physicians and Surgeons of Canada.

Our second recommendation is that the practice of diagnostic ultrasound should be confined to MD physicians with appropriate specialist training plus appropriate training in diagnostic ultrasound, as described in the appendix.

The third recommendation is that the College of Physicians and Surgeons of Ontario be the mechanism to provide extension of the existing programs for accreditation of all noninstitutionally based diagnostic facilities.

The above would guarantee to the people of Ontario an excellent standard of quality assurance without the need for new legislation, and it meets one of the major concerns of the ministry, as expressed by Dr MacMillan on day 1.

I would like to say a few words about cost containment, which is the second major concern that Dr MacMillan expressed. The second major concern is cost containment with preservation of access to readily available community-based diagnostic facilities. The vast majority of radiologists do not support unnecessary duplication of services or inappropriate billing patterns and therefore recommend that the expertise of radiologists be applied to current problems of cost containment.

The following measures have the unanimous support of both hospital and community-based radiologists as alternatives to increasing bureaucracy.

The section is in full agreement with the Ontario Association of Radiologists in emphasizing the need for a joint utilization management group consisting of experienced radiologists representing the ministry, the OMA, the OAR and the Ontario college and university chairmen. This group would provide expertise, advise on important questions, such as inappropriate billing patterns and location of community-based services in conjunction with the regional radiology committees of the district health councils and examine the propriety of ownership of diagnostic facilities by other than qualified specialists.

Immediate cost savings can be accomplished by applying the expertise of radiologists to current interpretation of the schedule of benefits of the Ontario health insurance plan. The preamble in section 73 on page 11 defines a specialist as "one who holds a certificate from the Royal College of Physicians and Surgeons of Canada in a speciality which normally is considered to encompass the service in question."

The section therefore recommends the following:

That professional and technical fees for diagnostic imaging be made available only to qualified specialists;

That claims by nonspecialists for fees for diagnostic imaging should not be a benefit of the Ontario health insurance plan;

That this rule should also apply to referral by nonspecialist physicians who have a direct or indirect financial interest in a diagnostic imaging facility; and

That self-referral by a specialist for a diagnostic imaging facility should be regulated by adjusting the fee schedule so that the technical and professional fees are paid at a lower level than those for referred practice.

The above recommendations to improve utilization of the schedule of benefits of OHIP would have immediate effects on cost containment. This has already been described as a major problem by Dr MacMillan.

The Chair: Excuse me. Would you be able to summarize this last section, since I have three requests for questions?

Dr Davidson: Yes.

The last section deals with accessibility and points out that amendment 7 to Bill 147 creates a possible crisis in conditions of practising for radiologists in noninstitutionally based practice. We have a feeling that there have been no thoughts into exactly what the facility fee covers. We have no guarantees. Many of our younger radiologists, in particular, have expressed great uncertainty, and of course there are the problems of long-term leases and long-term commitment to purchase equipment. None of this has been discussed, and for this reason we feel that amendment 7 and Bill 147 will have serious negative effects on accessibility in this province.

In conclusion, I have presented mechanisms to ensure excellent quality control, which are already in place, and that these provide the basic tools for accreditation or licensing of facilities, and there is no need for further bureaucratic measures for this purpose.

Immediate cost savings would result from correct application of the OHIP fee schedule, and loss of technical fees without adequate planning for facility fees is likely to lead to waiting lists and deprivation of health care for the people of Ontario.

Mr Eves: I have two questions, one for Dr Davidson and then perhaps one for the minister.

Dr Davidson, one cry that we have heard from various people, and ministry officials in particular, throughout the course of hearings on Bill 147, and specifically subsection 7(7), is that they feel there is no quality assurance without inclusion in Bill 147. Radiologists and others, such as yourself, who have appeared before the committee have insisted that there is in fact quality assurance and peer review.

Because there seems to be a difference of opinion here, perhaps you could explain to us what peer review currently exists, how likely it is that you or any other radiologist may be reviewed by your peers and, in your opinion, whether this can be augmented or strengthened without necessitating inclusion into Bill 147.

Dr Davidson: Yes. Peer review certainly exists at the present time and is mandatory, as I have pointed out in my brief.

There are two main areas for peer review. One is under the provisions of the Healing Arts Radiation Protection Act. I would seriously ask that every member of the committee take a look at the guidelines because this recommends or makes mandatory the appointment of a radiation safety officer. One of his responsibilities is a written policy for peer review. My own facility has been inspected recently and one of the questions from the inspector was, "Show me your policy for peer review."

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The second major area, and the major thrust in this direction, is from the Ontario college of physicians and surgeons. I myself have been on the ad hoc committee which has put into place a very comprehensive and searching method of peer review for both diagnostic imaging and ultrasound. This has already commenced and several facilities have already been reviewed. I spoke to Dr Roy Beckett on Thursday of last week regarding this question. He assures me that the assessors have already looked at several clinics and that the college is considering these at the moment.

I would emphasize that peer review is in existence and is mandatory, and we hope that this will become universal for all diagnostic imaging facilities and for radiologists in Ontario.

The Chair: Just a very short question.

Mr Eves: I guess my question to the minister basically is the same one. We seem to be receiving differing points of view with respect to quality assurance and peer review. The points made by Dr Davidson in his brief from his section on quality assurance, cost containment and accessibility, for that matter, I think are fairly well spoken.

Is it still the minister's and the ministry's point of view that quality assurance and peer review, as well as the other issues, are impossible outside of Bill 147, or could they not be achieved by following some of the recommendations that have been made by the Ontario Association of Radiologists and again today by Dr Davidson?

Hon Mrs Caplan: The point that Dr Davidson makes, I think, is an important one, and that is the support for quality assurance programs in all of the diagnostic facilities. The college of physicians and surgeons will be here tomorrow. We will have an opportunity to question what exists today and how this legislation will facilitate that kind of appropriate standard-setting and quality assurance program in all of the facilities across the province on a proactive basis so that people can be confident when they have a procedure done in an independent health facility that they are getting a safe procedure outside of the hospital environment.

The other point that you raise I am going to ask Gil Sharpe to just refer to because we have heard a number of acts mentioned here and we have had some clarification about the responsibilities of the HARP act. The Health Disciplines Act is one that he is also familiar with and perhaps he could clarify for the committee at this time what exists today under that act.

The Chair: Very quickly, Mr Sharpe.

Mr Sharpe: We have 35 other statutes we also administer, I am afraid. You may ask me to comment on those when we are done.

Hon Mrs Caplan: I know you could do that ably.

Mr Sharpe: Subsection 9(4) of HARP is the one that deals with the radiation protection officer and it deals with machinery, as I said before, and standards of machinery.

The college, as the minister indicated, will be here tomorrow to comment at length, I am sure, on this, but section 64a of the the Health Disciplines Act deals with establishing a committee on peer assessment by the council of the college.

My understanding and my reading of this provision is, first, that it lacks any teeth in the sense of enforcement of a physician who is found by peer review not to be complying. Second, even if they were to find, through the peer review process, that there was evidence of professional misconduct, subsection 64a(6) says that a member physician has a right not to have information given by the member in the course of peer review programs used against a member in any proceedings before the discipline committee of the college. So it would seem that it could not be used in the context of professional misconduct.

Again, I would have to fall back on what the minister indicated, that the college would be certainly the expert on whether or not this provision is adequate authority for them to

conduct a proper, comprehensive, universal peer review system.

Mrs Stoner: I would like clarification perhaps of two of the points that you seem to address. One of them is whether or not you are aware of there being private diagnostic facilities today that are run by nonphysicians, owned by nonphysicians?

Dr Davidson: Absolutely. Of course I am aware of that.

Mrs Stoner: At the same time, are you aware that billing can only legally happen through OHIP in payment to physicians?

Dr Davidson: Yes.

Mrs Stoner: But that there are people who are not physicians who are in fact billing for procedures?

Dr Davidson: Yes. I made that point in my brief, that we would like to examine the propriety of nonradiologist ownership of diagnostic facilities.

Mrs Stoner: I just wanted to clarify that that was the situation today that we are dealing with.

Dr Davidson: Indeed.

Mr Reville: I have to be very quick here. You have made seven very useful recommendations, plus an additional recommendation that we get rid of subsection 7(7).

Mr Eves: Which makes it eight.

Mr Reville: Which makes it eight. That is the same number as the eight-point plan, is it not?

Dr Davidson: Yes, it is.

Mr Reville: Although that is a coincidence. If, through some slow learning, the committee moves ahead with this in any event, would you be prepared to represent your section on an implementation committee?

Dr Davidson: Absolutely.

Mrs Cunningham: I guess my question has to do with your section on cost containment. You are talking about cost containment and you are talking about this joint utilization management group, and I think that was your question, was it not?

Mr Reville: I cannot remember now; I was interrupted.

Mrs Cunningham: You do not know what you meant?

Mr Reville: I will read about it in Hansard.

Mrs Cunningham: I guess many of us on the committee are somewhat confused as to the best way to go, but what we have been hearing is that the amendment is not going to look at in any way what the real problem, at least in your view,

could be, and that is the utilization of the services. That is what we want to be able to be responsible for, appropriate utilization. I think that is the issue. We will hear tomorrow with an expansion on the observations of Mr Sharpe.

The Chair: Have you gotten an answer?

Mr Reville: A preamble, for sure.

Mrs Cunningham: Yes, I guess I may have gotten the answer, but would you respond? Do you really think the concern of the government with regard to this legislation is utilization, and if it is, will this section help us with that?

Dr Davidson: Yes. The first point is that we do not self-refer to our own clinics.

I think the problem of utilization is absolutely vital. It is essential that the diagnostic radiologists formulate guidelines for the use of the types of tests we are discussing. I do not want to digress, but this includes the correct and appropriate use of mammography in the correct age groups. We would be very prepared to take part in any formation of utilization guidelines, which we think are particularly important.

Mrs Cunningham: Will this amendment help in this at all, in the utilization question?

Dr Davidson: I do not think the amendment helps radiologists in any way because I do not think it was designed for the types of problems we have been discussing. But what we are saying is that we would be very prepared to apply our expertise in designing a better system than has been proposed by the amendment to section 7 in Bill 147.

Mrs LeBourdais: Is peer review always done after the fact—in other words, as a result of complaint—or is it done as an ongoing process of assessment?

Dr Davidson: No, it is an ongoing process of assessment. It is not done after the fact. It may be done after the fact if there is a complaint, but we are talking about mandatory, routine, peer review. The Healing Arts Radiation Protection Act, despite what has been said today, deals with much more than the calibration and the factors concerned with equipment; it deals with the policy of the department for handling different types of clinical problems. The radiation inspection service is actually entitled to look at the peer review program and make recommendations if it thinks it is inadequate. So it is mandatory and it is an ongoing process.

Mr Reville: Do send us your views on mammography. The committee would be very interested in them. The ministry would not be as interested as we would.

The Chair: If I may ask Dr Guzman and Dr Thoburn to come up, please, and present on behalf of the Ontario Medical Association. I am going to ask you to try to accommodate all those other sections of your association that presented and try—I see your brief runs to 15 pages. Would you be able to give us an overview of this or at least just summarize it? I really do not think there will be time to read every word of this brief.

Dr Guzman: I guess we will have to do our best, Madam Chair.

The Chair: If you would try to limit the presentation to 15 minutes and questions to 10, that would really be helpful to us.

Dr Guzman: We will do our best; that is all I can say.

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The Chair: Thank you. It is nice to see you in person. I understand you are from my neck of the woods.

Dr Guzman: My name is Carole Guzman. I am a practising physician in the Ottawa area. Dr Thoburn is the honorary treasurer of the association. I am the president of Ontario Medical Association.

You have heard during the preceding hour presentations from our various sections, all of whom potentially face serious changes in their practices as a result of what has come to be known as the Reville amendment, but what we want to do at this point in time is discuss some broader issues facing the profession, and, I would suggest, the government, as a result of the inclusion of a significant amount of diagnostic testing in this particular act by this amendment.

The Ontario Medical Association believes that the committee acted in good faith in passing the amendment, but did so without having complete understanding of the impact on the delivery of health care. We noted the words of Mr Eves, who actually said that his decision was based on incomplete information that was made available in the very brief time that this amendment was under discussion, and we agree with Mr Eves about that particular issue.

What we want to do in the few minutes we have is to look at five different areas: (1) the history of the technical fees or T code; (2) the issue of quality assurance; (3) utilization increases; (4) the impact the amendment will have on accessibility; and (5), most important, the effect this amendment will have on the relationship between the medical profession and the government at this point in time.

We believe that there are better ways, as you have heard, to address the complex issues of quality assurance and utilization than by expanding the independent health facilities.

Dr Thoburn: I would like to explain the history of the technical fees. The total fees for many diagnostic services were divided between technical and professional components and introduced in the OMA schedule of fees in the late 1950s. These fees were subsequently copied by the OHIP schedule.

At that time, it was believed necessary to distinguish between the professional fees for physicians who were working in hospitals and the total technical and professional fees needed to compensate those doctors who were underwriting the cost of providing office space, etc, in their own facilities.

In addition to technical fees listed in the columns under the letter T, the schedule of benefits includes a number of other technical fees. There are technical components for many other diagnostic services. Virtually every fee in the fee schedule has an implicit technical component to cover the cost of running a practice.

In view of the foregoing, we submit to this committee that to arbitrarily and selectively remove specific technical fees from the schedule of benefits is discriminatory and unfair to many members of the profession.

For example, if ultrasound is performed on a person's abdomen, it would be included in this amendment, but if it were performed on a person's heart, it would be excluded, because abdominal ultrasound is listed with a T code while heart ultrasound is listed with a G code. Similarly, T fees for diagnostic radiology exist, but there are no T fees for therapeutic radiology.

A further example: Doctors who are performing treadmill tests to determine how well a person's lungs are working would need a licence, but if the same test were done to determine how well a person's heart is working, it would be outside the bill.

Our point is that the application of this amendment will lead to confusion as to what a physician can or cannot do in his or her private office. The amendment would also create an inequitable application for any quality assurance programs.

Dr Guzman: One of the points that has been made repeatedly at the hearings is about the issue of quality assurance, and I am going to shorten my statement on this because there has been a lot of talk about it. I can assure you that the desire to

improve and maintain quality assurance in medical acts is one of the very highest priorities of the medical association and we have for years had a tradition of working with the College of Physicians and Surgeons of Ontario to actually develop what are known as the peer review programs. These started as a co-operative effort.

The Ministry of Health, through the Health Disciplines Act, has ample methods of directing the college to investigate a facility or to investigate a practice or whatever it feels needs to be investigated under existing legislation. The college itself has ample opportunity and leeway within its legislation to change regulations and establish new programs.

I would suggest to you that the peer assessment program is not voluntary for me when it comes. If it comes knocking on my door, I must allow it in. If my practice is found to be inadequate, a charge can then be laid against me through the discipline committee in a full investigation. So my practice in fact is available to the college at any time through the various mechanisms that exist now, and this is true of all physicians.

If these programs are not living up to the expectations of either the college or the ministry, we submit that the college, the government and ourselves should begin to look at it. Ask us to look at it with you and develop different methods of quality assurance through the peer assessment program.

Dr Thoburn: When the issue of diagnostic imaging was first discussed by the social development committee, the discussion focused on utilization and how the cost of diagnostic imaging had been increasing at a significant rate. There has been little discussion about the reasons behind the increase in utilization.

There are many reasons why general practitioners such as myself will order more diagnostic tests. One of them can be found on the front page of a recent *Globe and Mail* where it talked about the rate of malpractice suits against MDs tripling. Studies like this have a definite impact on the medical profession. Other reasons for increased utilization include the emphasis on preventive medicine, increased patient expectations, geriatric care and technology.

We would like to ask this committee why it would force diagnostic testing into the Independent Health Facilities Act for the purposes of controlling utilization without addressing the specific reasons why that utilization has increased.

The increased utilization of health care resources is of concern to all of us. I pay taxes too.

It is currently being addressed in appropriate forums, such as the Scott task force.

The OMA has shown its commitment in the area of diagnostic testing with the cholesterol testing guidelines. These guidelines are medically sound, they provide options for physicians and patients and will reduce unnecessary testing. We believe the Scott task force can provide similar utilization guidelines for diagnostic imaging that will help control utilization while not jeopardizing health care accessibility.

Another utilization issue that has arisen is physicians referring patients to imaging facilities in which they have a financial investment. The government is concerned about the potential conflict of interest.

This is of equal concern to us, but we must point out that conflicts of interest are grounds for a charge of professional misconduct under regulation 448 in the Revised Regulations of Ontario, 1980, under the Health Disciplines Act. A conflict is further defined in subsection 28(3) of the regulation,

"It is a conflict of interest for a member to order diagnostic tests other than medically necessary tests to be performed by a diagnostic facility in which the member or a member of his family has any proprietary interest."

We ask the committee why, if conflict of interest is a concern, it has not been addressed through the current regulations?

It has also been suggested to this committee that private diagnostic facilities merely duplicate those facilities that are available in hospitals.

We believe the duplication argument is more theoretical than practical. Private imaging facilities do provide the same services as hospitals. However they do not have the same patient priority, and you have heard that earlier. Hospital-based facilities are primarily for inpatient services. We see private facilities as being complementary to hospital-based facilities. By having facilities where outpatients can have routine tests performed, hospitals can devote more of their resources to inpatients and to the higher-technology imaging service than are denied to private clinics.

We do agree with the Ontario Hospital Association that proper planning of diagnostic services is a must, but we must seriously question whether the best way to plan our system is by putting diagnostic testing into a piece of legislation that was meant to expand outpatient facilities but will instead push existing community diagnostic testing back into the hospital.

You have heard from hospital-based physicians that patients face longer waits for routine imaging tests in hospitals than in private facilities. We believe hospital waits will only become longer, because Bill 147 will discourage sole practitioners from conducting certain diagnostic tests in their offices.

Some general practitioners perform simple pulmonary function testing. Obstetricians and ophthalmologists perform ultrasound tests in their offices. Using Ministry of Health data, we have determined that these sole practitioners earn, on average, \$80 to \$100 a week in professional fees from these tests.

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Under this amendment, solo practitioners have two choices: apply for an independent health facility licence or cease performing certain diagnostic tests. We think it is reasonable, as we said in our first brief, to assume that the vast majority of these doctors will simply cease to perform the diagnostic testing that falls under this amendment.

Ten per cent of diagnostic testing is potentially affected by this amendment. It is being performed by solo practitioners. If they stop doing these tests, that will simply be another 10 per cent increase in demand on hospitals and other diagnostic facilities. Therefore, this amendment will serve to reduce the public's access to diagnostic testing and will create longer waits in hospitals and increase the utilization of private diagnostic clinics.

If testing is delayed because it is not sufficiently available, the entire treatment process is delayed. Medical conditions, if not properly diagnosed promptly, become more difficult and more expensive to treat.

Dr Guzman: I think we will sort of skip over because of our time constraints and, if we have time at the end, come back to the part we wanted to deal with about the intent of the bill. I think it is important for me to address the impact on the relations between the medical profession and the government that this bill will have.

This has been an arbitrary expansion of the legislation beyond its original intent into diagnostic facilities, and I submit to you that this is going to further strain relations between the government and the medical profession.

I would like to share with the members of this committee some insight into the current state of the medical profession in Ontario.

Earlier this year, the OMA commissioned Environics Research Group to conduct an extensive poll of our members. When asked about the

most significant issue facing doctors, the overwhelming response was government control over the medical profession and its activities. These results show a deep mistrust among the profession. I would ask this committee to consider how the challenges of the health care system can be met when there is mistrust and fear among health care providers.

We need to build trust. Our members want to work with the government and other providers to make the health care system work. Our polling has shown that 99 per cent of our members believe it is the responsibility of the medical association to be involved in addressing issues relating to government health policy. The same survey indicates that over 80 per cent of the profession wants to work with government to develop solutions to rising health care costs.

Our survey, the submissions to this committee that you have heard and our history with peer review and utilization guidelines have shown that doctors have made the commitment to making the system more efficient and more responsive to the needs of the people of this province. The OMA is right now trying to develop trust and understanding between the government and the profession. To achieve this requires behaviour by both sides that demonstrates good faith.

We submit to the members of this committee that there is a better way to address the issues of quality assurance, utilization increase and a better health care system than to force hundreds of doctors into the Independent Health Facilities Act. We respectfully request that this committee recommend the defeat of this amendment and we will work together, in an atmosphere of trust and respect, to co-operatively address the concerns which gave rise to the proposed amendment. Thank you.

Mr Eves: My question, actually, is going to centre on pages 11 through to the end of the brief that the OMA has submitted, which deal primarily with the issues the president has just touched on, the intent of the bill and the impact on relations between the medical profession and the government.

My question really is not of the delegation but of the minister. I think that the OMA makes some good points on those last four pages of its brief. They point out that they view this inclusion in Bill 147 as an attempt to move without consultation or negotiation. You have indicated to the committee before that you are quite prepared to consult with the OMA, the Ontario college, the Ontario Hospital Association and others. I guess probably what the OMA would like to hear is, are

you prepared to extend that commitment to negotiation and agreement before proceeding with any action on your part?

The additional question I would ask dealing with the intent of the legislation, what it is now going to do if this amendment to Bill 147 is passed, deals with the impact on relations between the medical profession and the Ministry of Health.

I perceive the OMA, individual groups and individuals who have appeared before the committee in the medical profession, especially the OMA's brief on page 15, the last page, as extending an olive branch, really, to the minister and the Ministry of Health. They are quite prepared to address the issues of quality assurance and utilization increases and they are quite prepared to sit down, negotiate and agree upon them with you in a method other than by unilaterally expanding the Independent Health Facilities Act. I guess my question to the minister is, is the minister prepared to accept that olive branch or is the minister insistent upon proceeding?

Hon Mrs Caplan: I would like to respond by saying that when I hear the representations of the Ontario Medical Association about trying to develop trust and understanding between government and the profession and that this requires a demonstration of good faith, then I echo that. I have been saying for quite some time that it is my desire to foster the kind of atmosphere of co-operatively working together.

The reason the government and I decided to accept this amendment to the act was that I felt that it was in the public interest. After listening to representations before this committee, the concerns raised by the college of physicians and surgeons and the Ontario Hospital Association, I believe that in fact in the implementation of this act there is an opportunity for the Ministry of Health and the Ontario Medical Association to work together co-operatively to ensure that this act is implemented in a manner which will not only show our good faith but also give us an opportunity to build that kind of relationship as we work together, not only for today but for the future as well, and I will make that commitment before the committee.

I believe that the college of physicians and surgeons, the Ontario Hospital Association and other physicians across the province will be able to work with us co-operatively and that as this act moves forward and is implemented, the kind of relationship that can develop will enhance the public's interest generally.

Mrs Stoner: I have two questions, the first, perhaps, to Ministry of Health staff, because I found some parts of this brief rather complex, particularly on page 3 with the references to echocardiography and the abdominal ultrasound, the difference between the T and G codes, and on page 4 of the brief the theoretical difference between the opportunity to treat prostate cancer outside of the amendment but not to diagnose it in a private office. Could I have clarification on the differences?

The Chair: I am having difficulty with this, because this is the time for the Ontario Medical Association.

Mrs Stoner: I am asking for clarification specifically related to their brief.

The Chair: You do not want to ask the presenters?

Mrs Stoner: No. I have a question for the presenters when I get the answer to this one.

The Chair: Would you be as brief as possible? This is not the usual way in which we have been handling these matters.

Hon Mrs Caplan: This is Dr Chester Brown. Do you want to give them your name so they will know who you are?

Dr Brown: It is Dr Chester Brown. I am a medical consultant for the ministry.

Basically, the G codes are in the diagnostic and therapeutic procedures section of the schedule of benefits listed at pages 65 to 87. You can see that they cut across all of the various specialties and would also be applicable to most general practitioners.

One of the effects of, if you like, capturing the technical part of the G code is that you would in that case indiscriminately affect physicians in their office regardless of their specialty.

The T codes, which are technical fees, may generally be seen to apply to those kinds of services which are provided in facilities as a result of the kinds of equipments that are employed. So the physicians who are using the T codes, whether they are radiologists or nuclear medicine specialists, are basically providing services where their entire practice follows from the use of that equipment as opposed to the physician in a private office who may be a cardiologist and doing echocardiography, which is an ultrasound technique, but performing that in his private office, if he chose to do so, would represent a relatively small part of his practice of cardiology, I would suggest.

Mrs Stoner: Thank you for the clarification. My question to the presenters relates to page 8.

We have had a lot of discussion here about the self-referral aspect. I note the wording that you read, which is, "It is a conflict of interest for a member to order diagnostic tests other than medically necessary tests to be performed by a diagnostic facility in which the member or a member of his family has any proprietary interest." What that seems to say to me is that a physician can order a test and as long as he deems that it is appropriate or necessary, then it is okay to do that in a facility in which he or his family has an interest. Is there no mechanism whereby there could be some more separation perceived necessary by yourselves?

1730

Dr Thoburn: In many communities, that would be impossible. I would remind you that there are numerous mechanisms in place to ensure that physicians give good care or order tests that are appropriate. You have heard countless examples of them today, ranging from our training to the college of physicians and surgeons.

To answer your question specifically, you might well be able to do that in a large centre such as Toronto and have doctors do nothing except just make a diagnosis and not do any testing in their office because there is a facility halfway down the street. But just recently, for example, in Timmins, obstetricians up there bought ultrasound equipment at their own expense and are doing the testing themselves because the hospital cannot afford to do it and they feel that patients are receiving inadequate care. So in that case, how could you separate it?

Mrs Stoner: I appreciate the clarification. You answered the question. It seems to present a potentially perceptive conflict to me.

Dr Thoburn: The wording is somewhat confusing in here. There is an assumption in that wording, which was made at the time, I am sure—it was before my time—that legislation was formed that if a test was medically necessary, it was medically necessary and it did not matter where you ordered that, so we are going to forget that one and we are just going to talk about nonmedical.

Mrs Stoner: But there is no mechanism of review to establish that it is medically necessary?

Dr Guzman: If I may, I think within the code of ethics of the medical profession anyone who would be ordering tests in order to make money out of them, which were not what would be medically correct, could be charged at the discipline committee of the college. This would

be a clear contravention of the code of ethics, in which case they would be subject to discipline at the college.

Dr Thoburn: If I may comment, there seems to be some sort of idea going around within this committee and other places that doctors are just running wild out there with no controls on them whatsoever. This is part of the trust business. I can tell you that my members, who are in a profession that is one of the most heavily regulated professions in this country, take that as a great affront. It is just simply not the case.

Mrs Stoner: I do not mean to create that question in their minds, but I certainly had a question from the way this was worded and wanted it clarified. That is why I asked you.

Dr Thoburn: I understand.

Mrs Cunningham: Thank you for coming down and letting us know so openly about your concerns.

I am feeling very uncomfortable as a member of this committee as I watch the tone of these hearings, obviously, from time to time and I wish I could believe that there was an open exchange of information and that people were listening, but I just have not been convinced.

I am especially concerned about the utilization, because I think that is where this whole thing came from, this particular recommendation. I am also especially concerned with regard to the proper planning of diagnostic services. I am not particularly concerned after—at least I have done my homework on this thing called quality, so I want you to know that.

I am just wondering, because I was very curious, as to how the minister would respond to my colleague's question, if after listening you are satisfied with her response as to why this legislation is needed. The question was, "Why is it needed?" and an opportunity to respond.

The other one that I think is most necessary—and I am not trying to be critical—is this whole thing about negotiations or discussions with some form of an agreement. Surely that can happen. I am wondering if you are happy with the response or if there is something you would like to advise the minister about with regard to this whole dilemma we find ourselves in.

Dr Guzman: I think I must respond, because I do not think the minister and I are talking the same language. Quite frankly, we view this amendment as inappropriate. I believe it was not done with malintent, but I do not think the full ramifications of it or the effect were appreciated, and one of those ramifications is what Dr

Thoburn related, that hundreds and thousands of physicians out there view this amendment as just inconsiderate, inappropriate, ignorant—whatever you want to call it—and unnecessary because we are heavily regulated in so many ways.

Yes, we want to talk about utilization and we are doing it. In fact, we sit on the Scott task force, as the minister knows. At this moment, they are already considering proposals on how to look at utilization of imaging services. You have a project under way between the ministry and ourselves looking at imaging services, so that to ask whether once all this bill is passed, and this amendment, which we consider an affront, and then you want us to negotiate about the amendment and apply it—quite frankly, I do not believe that I could lead our members to co-operate with that amendment because it is so severe.

Mrs Cunningham: I am sure you, like the rest of us, want to come to some kind of solution with regard to this. Are you prepared to spend more time with regard to the committee and give this particular aspect of the legislation some time and thought, maybe take some time aside from this particular bill with regard to this particular amendment and look at a solution to the problem, because I do not think it is going to be solved in the next week or two, given the kinds of input that we are getting and the kinds of responses. There has to be another way of solving this problem and somebody has to agree that there has to be a better way.

Hon Mrs Caplan: The whole purpose of these hearings, which I have been supportive of—in fact, I am here today so that I can listen and I will be here tomorrow to hear from the college of physicians and surgeons. I said from the very beginning when this bill was tabled that the intent of this bill was to allow for the appropriate expansion of community-based services, to have a quality-assured environment, appropriate funding mechanisms and a legislative framework to ensure the public interest was being served as we moved services out into the community.

I want to assure everyone who is here that the good intentions are as valid today as they were when the bill was tabled for first reading and that I look forward to working co-operatively with all of our partners in health care, including the doctors of this province.

The Chair: Thank you very much, both of you, Dr Guzman and Dr Thoburn, for presenting so accurately the views of your members and responding to our questions.

The Ontario Council of Teaching Hospitals will please come forward. We have four presenters listed on our agendas. Are there four presenters in this group today or just the two of you?

Mr Stoughton: There are four here, but two of us can present.

The Chair: Okay, we have got Vickery Stoughton, Mr Wallace, Mrs Mills and Mr Coleridge. If you would all like to come forward, even if you are not presenting, you might be helpful for questions. Would you identify yourselves for the purpose of Hansard, please.

Mr Stoughton: Yes, I am Vic Stoughton, vice-chairman of the Ontario Council of Teaching Hospitals. On my left is Richard Wallace, who is vice-president of ambulatory and support services from one of the teaching hospitals in the province. Lenore Mills, on my right, is the executive director of the council of teaching hospitals, and with us is Gary Coleridge, who is also on the staff of the council of teaching hospitals. We have prepared a brief and I am going to, consistent with our brief, make brief remarks.

The Chair: Before you begin, just so I will know where the committee wants to go, there are, as you see, 30 minutes designated for this presentation. It is twenty to six. Do you want to suggest that we close off at six or do you want to go to five after or 10 after? I want your direction now so that the presenters will know how to divide their time.

Mr Keyes: They should take as much time as they need up to that.

The Chair: What are you saying?

Mr Keyes: We should to try accommodate the presentation. They may not require the full 30, but up to five after six

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The Chair: Okay, those are the conditions under which we will begin then. Thank you very much. Mr Stoughton, please begin.

ONTARIO COUNCIL OF TEACHING HOSPITALS

Mr Stoughton: The Ontario Council of Teaching Hospitals is a voluntary organization which represents the collective interests of 18 major teaching hospitals on those issues of importance to its members and to the direction of health policy in Ontario. The 18 hospitals are located in five centres: in London, Kingston, Hamilton, Ottawa and Toronto. The purpose of the council of teaching hospitals is to preserve

and advance the role of Ontario's major teaching institutions as deliverers of health care and as leaders in health care development.

The council, on behalf of its hospitals, recognizes this role as having three essential components: education of health care providers, the development of research initiatives in co-operation with associated universities and the provision of a comprehensive system of compassionate care ranging from community outreach to the most sophisticated and technologically advanced services.

We appreciate the opportunity to present the views of the council of teaching hospitals and our member organizations on the amendment to section 7 of the Independent Health Facilities Act. While this is our first appearance before the standing committee on social development, the council wrote the chairman on 8 August 1989 and indicated its support for the Ontario Hospital Association's submission to the committee.

We have a written submission, which has been distributed and will be left with you, that identifies the position of the council of teaching hospitals. Our brief focuses on four areas:

First, the need for planning and licensing of nonhospital diagnostic facilities;

Second, the need for existing nonhospital diagnostic facilities to meet the same criteria as new facilities;

Third, the need for funding considerations for hospital diagnostic services if technical fees are eliminated; and

Fourth, the need for quality assurance programs for nonhospital diagnostic clinics.

We identified these areas because of the following consideration: Ontario enjoys a very good health care system. The system works from the standpoint of cost, quality and access, although we are all aware of periodic access problems. It works best when the government, the health care institutions and the physicians and nurses are working in partnership with each other. Simply stated, the government controls the funds and the legislation, doctors control patient access; and institutions have, for the most part, controlled technology access. These interdependencies have served the citizens of Ontario well from the standpoint of cost control and also from the standpoint of quality.

In contrast with the United States health care system, a move of services and technology outside of institutions has lost that system further control when one looks at it from a standpoint of cost. Furthermore, there has been very little accountability for the quality and appropriate-

ness of services delivered in those settings. Ontario cannot afford to make the same mistake. Hence, the council of teaching hospitals supports the Independent Health Facilities Act and agrees with the need for, first, planning and licensing; second, the need for existing diagnostic facilities to meet the same criteria as new diagnostic facilities, and, third, the need for quality assurance programs to "conform to accepted standards." But the council of teaching hospitals does not agree with elimination of the T fee component. Let me explain why.

Revenue from technical fees is currently received by hospitals for treatment and diagnostic services provided to outpatients only. Obviously hospitals would require budget adjustments if these T fees are eliminated. There are few incentives in the system that encourage hospitals to provide ambulatory services. The technical fee is one of the few financing methodologies which acts as an incentive to move hospitals towards expanded ambulatory treatment and delivery of services. At a time when the government is encouraging the shift from acute care beds to ambulatory programs, it would be counterproductive and shortsighted to eliminate financial incentives that further encourage these shifts. Hence, the OCOTH hospitals are against the technical fees being changed.

In conclusion and summary, our council supports the inclusion of nonhospital diagnostic facilities under the Independent Health Facilities Act, for the reasons outlined in our written brief and the verbal comments made. We do, however, have concerns about the removal of the technical fee, for the reasons I indicated. We see this as a counterproductive measure to a larger issue and goal of increased ambulatory services and the needed incentives to encourage that kind of shift. We thank the committee for the opportunity of presenting our views. We would be pleased to answer any questions you may have.

The Chair: Thank you very much, Mr Stoughton, for being so accommodating and summarizing so well.

Mr Reville: Just so I am not confused here, do you think it is a good idea to regulate nonhospital diagnostic facilities? You are nervous that if the T fee disappears, that will cause hospitals a severe financial loss that you could not make up. You may not have heard the ministry solemnly promise that the changing of the technical fee will not be to the disservice of hospitals. Regrettably, I am not quite sure how that will

happen. It may be that I can ask—in fact, I will: How is that going to happen, Dr MacMillan?

Dr MacMillan: When we were here for the first day of this second round of hearings, I gave a message on behalf of the minister that hospitals should be told that their funding base will not be jeopardized by virtue of the way in which we administer this act. The way in which we administer it would be open for negotiation and discussion and would include a variety of ways, including globalizing the amount or changing the T fee into an H fee, which would be applicable for hospitals, with an appropriate fee then possibly going to the independent clinics through the IHFA.

Mr Reville: The council of teaching Hospitals is not alone in this concern, as you might expect. I would think every hospital in Ontario would have the same concern. This gives me an opportunity to indicate that Chatham's Public General Hospital, St Joseph's Hospital in Sarnia and Memorial Hospital in Bowmanville each have their facts as saying virtually what you have just said. I have indicated other hospitals have done that as well.

Just while you are here, because you can help us on another matter as well, we have had evidence before the committee in respect of CAT scanners and MR, which seem to suggest that the absence of the T fee, in respect of the financing of those kind of imaging capabilities, technology, is directly responsible for the inadequacy of the supply of that kind of technology in Ontario. I am not convinced it is the same issue, but I suspect if anybody has got them, you guys have got them and probably would like a lot more. Is that something that is a separate issue, is that something that you should send us a brief on? Can you comment off the top of your head on this matter?

Mr Stoughton: Yes. There are no T fees associated with those particular technologies. As a result, the hospitals that have those technologies have to negotiate appropriate resources to cover the costs with the Ministry of Health.

Mr Reville: Both capital and operating?

Mr Stoughton: Both capital and operating. The unfortunate fact is that as the volume goes up, it often takes quite a while to catch up with those negotiations. As a result, you are funding the operations of those technologies out of money that theoretically you do not have while you are engaged in negotiations.

Mr Reville: So is that a dysfunctional negotiating procedure that should be corrected?

Mr Stoughton: One way to get a quick exchange as the volume goes up, if there was a T fee associated with ambulatory services, then as the volume went up and as you encouraged more treatments on an ambulatory basis, you would not run into this kind of situation where you were front-ending the cost.

Again, I do not personally have an objection as to which way it is funded. I am just pointing out that (1) it has to be funded and (2) there is more of an incentive to move patients out of acute care beds if in fact there is a financial incentive as well as a policy incentive and everything else. I think it is counterproductive right now to stop any incentive in the system that helps encourage more ambulatory and community-based treatment.

If it does not make a difference financially, then we are into the same problem if the patient is in the bed or outside of the bed, and unfortunately the patients in the bed get higher priority for access to restricted technology. If you are in hospitals, what you begin to appreciate is sometimes the sickest patient is a patient who is admitted. Too frequently, we admit patients to the hospital to give them access to restricted technology when technically they do not need to be in the hospital. They do need access to the technology, but they do not need to be in the hospital. So we need more incentives to encourage the use of this restricted technology for outpatients and a good incentive is a financial incentive. That is a long-winded answer to your question, but—

1750

Mr Reville: I will read it over and see if I can figure out what you said.

Mr Keyes: Mr Stoughton, there seems to be a lot of debate among the presenters to us here from both sides of the argument that one of the major reasons why the rapidly expanding number of clinics comes about is the inability of hospitals to serve the needs of the outpatients, etc., and that waiting lists are too long. We hear from some hospitals that the establishment of clinics in the immediate vicinity to them has cut out one of their major services that they have provided, which also helped in their budgeting.

From the teaching hospital's point of view, could you give some indication as to the capacity of your hospitals to deal reasonably with the number of patients coming towards them? To what extent do you find severe waiting lists a problem in order to meet the demand, and thereby see new clinics spring up?

Mr Stoughton: The more rationalized the technology, the longer the waiting lists potentially are. At the same time, we have two objectives when we look at rationalizing technology: One, we need to be cost-effective; and two, we need to get the patients that require that particular technology to the technology on a timely basis. But in fact there is no health care system in the world in which oversupply does not create its own demand, so one has to continuously be concerned about oversupply and then judge that against the costs and judge that against the access. So one is concerned about quality, about cost, about access and you try to maintain a balance in all of those things.

If you are telling me an independent health facility is going to create more ultrasound, I am not sure I would say that is justified, but frankly, I do not have enough information on a provincial basis to know that.

We do not have a problem with waiting times for ultrasound in most of our teaching hospitals. On the other hand, if you get into more restricted technology, the system responds very slowly on the allocation of very high-cost technology. That is not inappropriate, but sometimes it becomes inappropriate.

The high-cost technologies are the MR, as you mentioned, \$2 million; the lithotripter, which has not been mentioned, another \$2 million; CAT scanners, although it has gotten better, but when they first came out, \$1 million.

As the efficacy of this technology is determined over time, the system needs to be more responsive, because what happens is that we put patients in beds unnecessarily to give them access to that technology and there is a hidden cost there that none of us fully appreciate.

Is there too much of a problem? I do not think that is really the issue. The issue is that whatever technology is determined to be necessary, it ought to be utilized for the appropriate reasons and the use of it ought to be accountable. That is why we support this particular bill, because we see both the evaluation of need being required and the accountability being in place.

Mrs Cunningham: My question had to do with this whole issue of the measurement of need, and you have just answered the question, but I am not sure which part of the amendment I should be looking at to find out just where or how this particular amendment will solve the issue of the appropriate technology being used in this whole assessment of need. I am not sure how this amendment does it, especially given the fact that physicians have said, "We don't like it and we'd

rather work in another arena to solve the problem; there are better ways of doing it." Have you thought of that?

Mr Stoughton: I really have not thought of it, but what it does is that it very much puts the distribution of that technology into an approval process that I would suggest involves a pretty public debate, both within local communities and within the Ministry of Health. In and of itself, that creates a certain form of accountability and, as a result, represents a little more control than what exists currently.

Mrs Cunningham: Do you think that this particular amendment would encourage the format of this public debate to the same extent that the seven-point plan as put forth by the Ontario Association of Radiologists would?

Mr Stoughton: I am sorry, I cannot speak to their plan. Frankly, I am just not familiar with it.

Mrs Cunningham: The last one is that at least the teaching hospitals in London that I conferred with said the key question for me to ask would be: Given the amount, even if someone was looking at the technology and the usage of it, first, do you really foresee in the next five or 10 years that we are planning for that there will be less need for these radiologists' services; and second, given government policy, do you think that if in fact these clinics closed down the hospitals will be able to respond to the needs? Those are two questions.

Mr Stoughton: Right. I might just make a comment. We had a meeting of the Ontario Council of Teaching Hospitals in London on Friday of last week in which the London hospitals participated in discussing this presentation.

Mrs Cunningham: So I am sure you are aware of these questions.

Mr Stoughton: Yes.

In specific response to your questions, I do not think the requirement for services is going to slow down. There is just no indication that that is the case. We are treating more and more chronic illnesses and that puts a particular load on the health care system. We are very good at finding solutions to maintaining people in a particular health status, but not at curing the disease. As society becomes older, more and more people are going to have chronic problems and that is going to put more and more of a load on the system for that reason, if not for anything else, so the kinds of pressures that are on radiology are not going to go away. We need radiology; there is just no question about it.

The real issue is not recognizing that need, the real issue is, how do you assure cost-effective, quality services? There may be a better way, and if so, somebody might think of it. All we are saying is that this starts taking the right steps and therefore, in our opinion, should be supported.

Could hospitals absorb all the community-based radiology? The answer is, absolutely not. We absolutely need community-based radiology. There is no question about that.

Mrs Cunningham: Yet on this amendment the radiologists are coming forth and telling us that young people are jeopardized by it, given the financial input they have had. The other part that concerns all of the committee members, I think, is that many people came before us on the act itself, never mind just the section to do with radiology, and said, "We can't start up, given this piece of legislation." We are in a dilemma.

Mr Stoughton: The way I read the legislation, they could not start up without the necessary approvals. If you put the amendment through in which there is no technical fee, they could not start without some kind of global allocation. Now they can start up without approval, based on the fact that they could borrow the money and be assured they were going to be reimbursed over time through the technical component.

Mrs Cunningham: As hospitals are.

Mr Stoughton: As hospitals are.

Mr Jackson: I have two brief questions. One has to do with your referencing the more public aspects of the debate in terms of determining which are the approved services, not only for radiology but the whole gamut of those that we covered under the bill. When you tie that into technology, I get nervous, because in the earlier phase of our public hearings there was a lot of concern about new leading-edge technologies as opposed to current existing medical procedures.

Quite frankly, I do not share your conviction that it is a more public process with more scrutiny. For example, lithotripters currently are going through that debate. If Bill 147 were in place, it would be almost impossible for district health councils, or whichever regional mechanism would create that debate to determine that. It really still requires the government to proceed with the analysis and to implement it, yet there is a lot of discussion about lithotripters being put immediately into clinics as opposed to bringing them into hospitals.

Your brief does not really touch on that. You are teaching hospitals and you would think that would become an essential component. You

know my bias for the inclusion of this new lithotripter for Chedoke McMaster Hospitals for that very reason. If you could comment on that, then I have one other request.

Mr Stoughton: The value of putting new technology into a teaching hospital is that as the efficacy of that technology is evolving, the placement of technology in the teaching hospital environment is supportive of clinical evaluation as to appropriateness. One can make a very strong case why it is in the interests of the system to make that kind of placement.

I would argue that once the technology is well defined and its value and efficacy are substantiated and determined, then that technology does not necessarily have to be in a teaching hospital.

1800

In the case of a lithotripter, as an example, one would have to look at the complications of the use of that technology to determine whether under certain circumstances it could be in an ambulatory setting. In the case of a lithotripter, with some of the complications that might occur, I would argue it is better to have it in a hospital. That might be debated by some people, but whether it needs to be in a teaching hospital or another hospital is very arguable, I think, because the efficacy of that particular technology has been determined.

Having said that, one of the things that occurs within the system, has proven to be cost-effective and really does not get talked about is that we tend to concentrate high-cost technologies in a very few number of centres, mostly within the 18 teaching hospitals of the province. There is a whole substructure of support that backs up these technologies and as a result is not duplicated in the community hospitals.

When you look at this health care system and compare it with other health care systems, and we do this all the time in trying to become more cost-effective, and even comparing it on an institutional basis, what you find is that the number of full-time equivalent employees in teaching hospitals in Canada is roughly equivalent to what they are almost getting to in the United States. They are coming down. Their cost base is getting lower. But when you take full-time equivalent employees in community hospitals in Canada and compare them with similar hospitals in the United States, Canada is way below the community hospitals in the US and it is simply because the community hospitals have tried to duplicate all the technology that is available in all the teaching hospitals.

Mr Jackson: In the United States?

Mr Stoughton: Yes. If you apply that to Canada, one has to be a little careful about taking high-cost technologies and distributing them to a whole host of hospitals, simply because the whole substructure of support is not going to be there. Whether it be other radiology services, the lab services that need to be done as a prerequisite to the procedure taking place, the anaesthesia capability or whatever it may be, they are always there and they are always there as a backup in a very efficient way in the major teaching hospitals. They may not be in the community hospitals. Again, that just would have to be looked at if you were to move these high-cost technologies out.

Mr Jackson: I will not debate that point with you, but I seriously challenge your assumptions about the comparison to the US, because they do have greater access. They may not have complete access, but the technology exists there. You just have to look at our OHIP schedule of things that are covered in the US which are not covered here and paid for and there is far greater access there.

Mr Stoughton: As a Canadian said in Washington last week, Canada discriminates access relative to technology control and the US discriminates on the basis of income levels.

Mr Jackson: True enough. That is why renal stone patients in the Hamilton area are going to the United States and paying the additional fees in order to do it. That is well documented.

My final question has to do with this notion of who finances the community clinics versus hospital-based services. I raised the question before with the Ontario Hospital Association and now I will with you.

This bill and the ministry at some point could make provisions so that foundation funds in any hospital, which would include a teaching hospital, could be a source of revenue for the development of not-for-profit outpatient clinics. I wondered if your organization has examined that; if you have looked at the implications of it and if you have any comment.

You may wish to check Hansard to see what your parent organization commented in that regard, but I happen to have a lot of proper fears about those funds that have been raised for beds which we now know we are not going to have. It may be appropriate to put it into equipment such as lithotripters, but that may further compete with the existing clinics that are in operation.

Have you thought about this? Do you have any position on it? Are you concerned about potential future intrusions into foundation funds?

Mr Stoughton: The Ontario Council of Teaching Hospitals has not discussed this as an organization and I am not familiar with the response you got from the Ontario Hospital Association, so my comments would only reflect the organization that I work at, which is the Toronto Hospital.

The Toronto Hospital Foundation raises money for two purposes. One is to support research programs and the second is to support capital programs. I will qualify the capital comment to say that we do not raise money to support capital programs that add a burden on our operating costs without prior approval of the Ministry of Health. Any hospital that would go out and raise money for capital purposes without getting prior approval from the Ministry of Health should have one of two things happen: either get its knuckles rapped or be told that it has to reallocate existing operating resources to cover the cost of those operations. That is a personal opinion.

Mr Jackson: Let me just say to you that in this instance my community hospital did react to two election promises. The minister attended the hospital and subsequently it has offered to use its current operating budget to assist with the cost. Even under those two assumptions, the beds are not forthcoming. So they feel they have conducted themselves in accordance—

Mr Grandmaitre: Could we discuss this at budget time?

The Chair: Yes, I think you are slightly off topic in your final statement.

Mr Jackson: You just made your comment on the record on that point and I tend to agree with you.

The Chair: Thank you very much, Mr Stoughton and those who accompanied you.

I would like to remind the committee that we will be meeting here tomorrow at 3:30 pm and Mr Elliot will be chairing in my absence.

The committee adjourned at 1807.

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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Independent Health Facilities Act, 1989

Second Session, 34th Parliament

Tuesday 7 November 1989



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 7 November 1989

The committee met at 1536 in room 151.

INDEPENDENT HEALTH FACILITIES ACT, 1989 (continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Acting Chair (Mr Elliot): I would like to welcome you to the standing committee on social development. We are considering presentations on the grandfathering of independent health facilities under Bill 147, column T, regulation 452.

I am pleased to welcome our first presenters of the afternoon, the Independent Diagnostic Clinics Association, in the persons of Neena Kanwar, the president; Bob Simpson, the vice-president; Larry Plener, an adviser; and Ron Hoffman.

According to the agenda, lady and gentlemen, you have 30 minutes for your presentation. You may use any or all of that for the presentation. Usually if there is time remaining, the committee members like to question. Would you proceed, please?

INDEPENDENT DIAGNOSTIC CLINICS ASSOCIATION

Mr Plener: Thank you. Good afternoon. My name is Larry Plener and I am a member of the board of directors and I have the privilege of speaking on behalf of the Independent Diagnostic Clinics Association.

First of all, I would like to thank the members of the committee for their patience and their willingness to listen to the concerns of those directly affected by Bill 147 and its amendments. We would like to recognize the leadership shown by the members of the Legislature in their desire to control development of diagnostic imaging facilities in the province and in showing enough concern to return the bill to committee for public discussion.

The Independent Diagnostic Clinics Association consists of owners, operators, technologists, employees, medical suppliers and support businesses, both small and large, involved in the diagnostic clinics across the province. It is intended to have a role with a wide range of consulting and advisory services to its members

and was formed in direct response to this Bill 147 to represent the interests of the community-based diagnostic facilities. At the last meeting of the association, a motion was passed recommending that we oppose Bill 147, and specifically Mr Reville's amendment on subsection 7(7) as it applies to diagnostic imaging operations.

We do not want to talk about licensing and control of clinics. You want it; we accept it. We do not feel it is necessary to talk about quality assurance. You want it; we want it. Let's not talk about improved access to the services. You want it; we want it. Let's not talk about controlling costs. You must, and we are quite willing to co-operate.

Let's talk about Bill 147, and specifically the amendment, which is subsection 7(7). The appearance of this amendment just before final reading raises concerns that may not have been sufficiently thought through. Adding the amendment belatedly to legislation which was designed for substantially different clinical situations is disquieting to us and raises far more questions than we have been able to answer.

The bill was designed to license an estimated 20 facilities which bill directly to the public. The amendment, which extends the reaches of the act to almost every facility billing a technical fee, is akin to dropping an extra hump on to a passing camel and expecting it to improve its performance.

Private diagnostic imaging facilities have built a much-needed service using qualified personnel, enterprise, resources and finances to respond to a public demand and need. Our businesses do no advertising and do not promote to the public. All patients are referred to us by licensed doctors and our test results and reports are returned directly to those doctors.

If the technical fees, which are the only method of payment to our members, are removed, the large investments of our members in their state-of-the-art medical testing facilities and equipment could be lost. Under the act, our businesses are subject to confiscation by the Ministry of Health. Moderate estimates by our members indicate an investment of more than \$150 million, so far without the cost of a nickel to the province, in state-of-the-art diagnostic equip-

ment. Under the act, clinic owners could be left bankrupt and an estimated 6,000 jobs lost.

The very existence of independent clinics shows a real need for the services. Our facilities are community-based and spread throughout the province. We have members here from Ottawa, from Sudbury; all very concerned. They are far more flexible and available than hospital-based clinics. The waiting period for tests can be 80 per cent shorter than the waiting lists at many local hospitals.

What are we concerned about in Bill 147? By law, we are not allowed to charge a fee directly to a patient. Facility fees, as set out in the act, cannot be charged. As such, our members did not fall within the definition of independent health facilities as set out in the bill and by subsection 2(2) we were specifically excluded. This, and the government information releases until very recently, show the bill was never intended to cover or capture diagnostic imaging facilities and was never intended to regulate or apply to our members.

However, the recent amendment, subsection 7(7), states:

"This section applies with necessary modifications to a person as though the person operated an independent health facility on the 2nd day of June, 1988, if the person, before the coming into force of this section, was operating a health facility and charging fees that were set out in a column denoted by the letter "T" in regulation 452 of Revised Regulations of Ontario, 1980, made under the Health Insurance Act and if, before this section comes into force, those regulations are amended so that those fees are no longer set out in such a column."

To say the least, we have difficulty in understanding this amendment. T, or technical, fees are fees charged under OHIP by diagnostic clinics for tests that we perform on patients referred to us by doctors. The removal of these T fees, taken literally, means the end of any payment for services by every clinic in the province.

Saying this, however, is not entirely true. The amendment refers to vertical T columns, while a number of the technical T fees are in horizontal rows. These would still survive, so any services performed for horizontal T fees would not be covered by the bill, while vertical column T fees would. I trust you can see the uncertainty this creates in our members.

We feel that the bill was originally designed to prevent direct billing to the public for medical services—excess billing. In discussing criteria for

licensing facilities, clause 6(3)(a) gives preference to health facilities to be operated on a nonprofit basis.

Why would a licensee invest thousands of dollars on specialized diagnostic equipment without the opportunity to be rewarded for his efforts? A mammography radiography X-ray unit costs over \$100,000. A single photon emission computerized tomographic camera used for cardiac testing now costs over \$300,000. Our members cannot continue to purchase the most modern medical testing equipment unless there is a continued guarantee of a fee for services, which has been the established method of remuneration for decades. If our members are not willing to invest this kind of money in this new technology, who will? The province?

Comment was made of the increasing billings to OHIP for diagnostic tests. We would point out that this is not the result of more clinics in the province so much as a reflection of the increase in population and the normal inflationary increases to the OHIP rates. The largest area of growth in testing recently has been in mammography and intracavitary ultrasound, which have increased by 200 per cent since 1985 and represent from six to eight per cent of the total increase in diagnostic billings and are the direct result of campaigns by the Ministry of Health and the cancer society to stem the burgeoning costs of cancer treatment by early diagnosis. Testing for early diagnosis of disease is easily the most cost-effective method of disease treatment.

Subsection 6(4) allows the director to issue any licence subject to limitations and conditions as the director considers necessary. We feel that our members have a right to know what kind of limitations and conditions the director can place on a licence, especially a licence which must be renewed periodically. As you know, technology changes rapidly and our members use the highest quality of service and efficiency to ensure continued patient referrals. They must have the flexibility to make investments necessary for their continued survival.

Section 9 allows the minister to issue a direction not to issue a licence to any person. Further, section 18 allows the minister to ban the renewal of a licence to any person. This appears to give the minister unprecedented power without any right of appeal. If public funds were required to establish the facility or to pay for its equipment, this might be understandable, but in a private facility financed by its owners and remunerated solely by the amounts determined

by the government through OHIP payments, this type of overriding and discriminatory power hearkens back to the Duplessis era. We feel this provision should not be allowed to stand.

Section 10 states, "A licence is not transferable." As recently as 14 September of this year, the fact sheets from the Ministry of Health state that a licence is transferable. These two statements are wholly inconsistent. How can it be fair that a clinic not be allowed to transfer a licence so long as quality control is assured?

Our members, in the main, constitute independent small businesses and the inability to transfer a licence would lead to severe financial losses. Clinics must be able to respond to changing demographics and populations. Often a small radiology clinic is located in a medical building with a number of doctors. If the doctors decide to move to a new location, the diagnostic facility would have to be able to move with them, yet it is unclear whether transferability means between persons or locations. In southern Ontario we have seen unprecedented growth over vast acreages, with many people living miles away from any central hospital. If a new medical building is established in one of these areas, can an existing licensee not move to this facility to respond to the need?

Section 11 states that a licence must be renewed every five years unless it is revoked or surrendered. Under this bill and a number of existing acts, our members are subject to regular inspection, most far more onerous than that envisioned by this bill. So long as quality is maintained to the highest standards that the Ministry of Health can establish, what is the need for automatic expiry of a licence? Can our members reasonably be expected to invest millions of dollars in equipment that must be depreciated over a 10- to 12-year span when their licence to operate can only be granted for five years?

We have been told on many occasions, and throughout these hearings, that the main focus of the Ministry of Health in promoting Bill 147 is to ensure the highest standard of quality. We can assure the committee this has already been adequately addressed by the Healing Arts Radiation Protection Act, HARP, which governs radiology and X-ray clinics. HARP applies to all X-ray installations in Ontario, covering all quality control involving medical imaging equipment.

HARP was hailed as being in the forefront of quality control legislation and ahead of any other North American jurisdiction and has been used as

a guideline for implementation in other jurisdictions. It provides for the development of regulations to promote the safe use of X-rays in the healing arts. It provides for the registration and approval of the installation of X-ray facilities and equipment and the definition and regulation of the classes of persons who may prescribe an X-ray examination and of the persons who may operate X-ray equipment. It requires the owner of an X-ray facility to appoint a radiation protection officer charged with ensuring that every X-ray machine is maintained in a safe operating condition and complies with all of the regulations under the act.

The Ministry of Health is authorized to appoint a director of X-ray safety to prevent the unsafe use of X-ray equipment and HARP establishes the Healing Arts Radiation Protection Commission to advise the minister on matters relating to X-ray health and safety, to approve training courses for all personnel involved in the use of X-rays and to examine any such matters as X-ray screening programs and developing X-ray safety regulations.

HARP further establishes an advisory committee consisting of representatives from each of the healing arts regulated by the act, as well as radiological technologists and medical physicians, to advise the commission.

We already have the model for quality controls and it already governs the majority of the members of our association. With minor modification, this act or specific acts can be created to properly regulate diagnostic facilities. The provisions of the HARP commission are far more effective than the inspection provisions set out in sections 25 and 26 of Bill 147.

Even more stringent are the requirements in place for our members licensed by the Atomic Energy Control Board for work in nuclear medicine and cardiology. In fact, as you can see, the vast majority of our members are already regulated, licensed and tightly controlled to ensure safety and the highest standards of excellence.

To operate a viable business there are certain things which are absolutely necessary for survival and success. You must be allowed to charge a fair and reasonable fee for the services which you render and be able to expect a reasonable return on your investment and for your labour. To ensure long-term success and growth in a rapidly changing world, there must be some assurance that it has real value, that your business can be passed on and that someone is able and willing to pay a fair value for your business. Without this

fair value, no bank or lending institution will help to finance the very expensive equipment needed, and we do not feel the members of our association should have to rely upon government grants or guarantees to ensure that the best equipment and service is provided to the people of the province. Bill 147 would remove all of these assurances.

To conclude, we must oppose the current amendment to Bill 147, subsection 7(7), as applied to imaging facilities. It is unfair, ill-thought and unjust.

If we were starting with a new industry, if we were beginning with a new playing field, we would have no right to oppose. However, the playing field has been established and the rules used to govern our members for decades. Vast sums of money and uncountable hours of labour have been expended to establish the diagnostic facilities as legitimate small businesses. Our businesses employ an estimated 6,000 people in this province and have spinoffs of employment for people involved in medical and office supplies, equipment manufacturing, high technology and other fields employing thousands more.

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Whether Bill 147 is to throw this vibrant and viable sector into disarray is the question before you and the Legislature. We must deal with the people—the technicians, the technologists, doctors, specialists and many others who are operating these clinics—whose livelihood will be affected, who have invested their moneys and their futures into these clinics. Surely we cannot justify the upheaval of all of this without due consideration and consultation to produce a law which guarantees protection for all parties. Bill 147 does not do this.

As we have stated, we welcome quality control. That is not the issue. We are unaware of any complaints before the ministry against any of our members based upon lack of quality of the tests or reports provided. It is changing the rules in the playing field without any real consultation or input by those providing the services to the public which we cannot accept or support. We must press for proper legislation which will address our particular area of health care delivery and which deals with our concerns, not only for ourselves as a service industry, but with continuing health care for the people of this province.

A bill which deals with our concerns also deals with your concerns. We are concerned about licensing, quality assurance, funding and the fair

value of our businesses. Without our input, we are disenfranchised, without a voice in the process. We feel that with the co-operation of our members, with consultation and the vast expertise our members can bring to you, a fair and workable piece of legislation can be created which can maintain Ontario in its place of leadership on this continent.

Bill 147 was designed to regulate a handful of mini-surgeries and abortion clinics. It was not designed—it cannot be stretched—to regulate over 1,600 diagnostic clinics serving the province. It is the wrong vehicle. We feel it is unworkable.

Mrs Stoner: I gather from the list here that you are not a doctor. Is that correct?

Mr Plener: No, I am not.

Mrs Stoner: Are the members of your group doctors?

Mr Plener: I assume many of the clinics, especially radiology clinics, may be owned or operated by doctors. None of the people before you are doctors, no.

Mrs Stoner: Are members of your association doctors?

Ms Kanwar: Approximately one third of the members of our association are doctors.

Mrs Stoner: Are you aware then that people who operate diagnostic facilities are in fact in breach of the regulations under the Health Insurance Act, in that only physicians or employees of physicians are able to bill under the OHIP process, not owners of facilities?

Mr Plener: Neena, perhaps you could answer that.

Ms Kanwar: We are not billing. There is a corporation formed which is involved in the administration of the clinic. This corporation does not do the billing. The physicians involved with the corporation, on the boards of directors of the corporations, are doing the billings and are in charge of the billings and the financial spending that is done within the corporation.

Mrs Stoner: Then what is your relationship with the physicians who are doing the billing?

Ms Kanwar: They are on the board of directors of the corporation.

Mrs Stoner: Thank you.

Mrs Cunningham: I think you sort of threw me with the question, because if we are looking at something that is illegal and not operating correctly, I think most of the people who own these businesses would like to have known it.

Mrs Stoner: That is why I have asked the question, to see who has been aware of who is entitled to bill.

Mrs Cunningham: But the statement was made and I really do need a clarification. I do not like the feeling I get when I think there is a bunch of people out there operating illegally. The statement was made; I would like to know if it is legal or illegal. This is not the arena to be discussing it, although I very much appreciate the question, but if it has been ongoing, then maybe we had better get that absolutely straight.

The Acting Chair: I would like to call on the ministry for clarification here.

Dr MacMillan: A number of years ago, physicians were allowed the right to gather together under a group name or group billing. When that happened, physicians gave over the right of the government to direct cheques directly to them for the medical services they were involved in. As a result, slowly and gradually, physicians in some cases have given up that employee relationship with those who help do the service. I can give you the example of audiology. Anybody who does audiology on behalf of the physician must be in an employee-employer relationship. Unfortunately, from time to time we detect cases where this is not the case and we have the right, under the act, to recover for moneys given out inappropriately.

What has happened in Ontario with diagnostic labs is that physicians have sometimes abrogated their right for direct payment to them. The cheque in fact goes in under a group, but it goes into the account of a corporation which may or may not have physicians on its board. There are some large corporations now that own many diagnostic services throughout the province that do not have physicians on their board. In fact then the employer, who is now not the physician but the private entrepreneur, is deciding in the payment of the physician which may be the professional component or a portion thereof.

Mrs Cunningham: What does that mean? Is it legal or illegal? Does the ministry know about it? Have they taken any steps? That is all. The statement was made and I think the people sitting in the room have to know if there are illegal clinics going on.

Dr MacMillan: I think all the people in the room are quite well aware of it. In fact, at least a month or two ago, another reminder notice went out to them about that inappropriate relationship and many of them are doing some things about it. At the present time, however, it is not to suggest that there are not useful diagnostic services out there; it is just that the arrangement between the doctor and the entrepreneur got mixed up a little, and it is alluded to by many of the radiologists

who have suggested that they would prefer that private operators not be involved.

The Acting Chair: Mrs Cunningham, I felt that was a supplementary to the previous question. Did you have another question, because you did not catch my eye before—

Mrs Cunningham: I do. I apologize. I am assuming that we have, right now, the rules or the regulations that will solve the problem that has been raised before the committee. That is something that can be solvable separate from this bill, I would hope.

Dr MacMillan: If the amendment passes, the problem is solved because our payments will be to the owner of a clinic. It will not be tied directly to the Health Insurance Act and the regulations that follow from that.

Mrs Cunningham: And if the amendment does not pass, then what happens?

Dr MacMillan: If the amendment does not pass, obviously the health insurance division will have to decide to what extent it wants to enforce its regulations and policy or to what extent it would like to see them amended.

Mrs Cunningham: So the point then is that you may be able to enforce with the policies that you have now. You may—I use the word advisedly—and if you cannot, you will amend your own policies to be able to deal with what you consider a breach.

Dr MacMillan: As I said, there are two ways of doing it. You either enforce the regulations and the policy as they presently have existed, and which most of the world knows inasmuch as reminders have gone out over the years, or we amend the policy to account for the reality that exists out there, to what extent—we do not even know—that there may be nonphysicians who are owners of private diagnostic services.

Mrs Cunningham: Okay, but with or without this piece of legislation, you can deal with the problem is what I am getting at. I think you have answered my question and I appreciate that very much.

I guess my whole purpose in asking questions today is that I am not a believer in legislation that is not wanted or is not necessary. So that is where I am coming from with this particular bill. However, given the reality of the membership of the committee and the government itself, I have to face the fact that this is a possibility, a very real possibility. So I am just trying at this point of time either to influence my colleagues or to make changes in the bill. My question has to do with the fair value of our businesses. Actually, this

would be a question that my colleague Mr Eves would normally ask, but he may jump in sooner or later.

There has been some criticism about this five-year licence. I am wondering, is that what you are aiming at when you say fair value of our businesses, considering that one of the questions in the House today had to do with the competitiveness of Ontario? Can you be specific about your concern about the fair value of your businesses?

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Mr Plener: It is a dual nature there as to the transferability of a licence and its renewal, the requirement for a new renewal, whatever the procedure is. I think, as Dr MacMillan has said, there are no rules and regulations available yet to tell us what the application procedure or the renewal procedure is. We have been told the grandfathering clause would allow anyone now operating a clinic to continue operating a clinic, but at the end of five years you are going to be back to square one with a renewal, a new application for a licence. There are no rules to tell us what to do.

Now the fair value part: As I have stated, if we go out to buy a new camera and every year something newer, faster, better, more efficient comes out, we are now talking about \$250,000 to \$500,000. Whether it be doctors, entrepreneurs, whomever to put this money forward, you usually just do not walk up with cash; you go to a bank, a lending institution and arrange for financing. To do that you have to give them something, show them something worth value. If you have something that has no value, that can be issued at whim or revoked at whim without clear concise rules, you cannot raise that financing. Nobody is going to give you \$500,000 on the hope that for the next two or three years you can make lots of money and do really well and then disappear. That is not what we are here for. These are run as a business, they must be. Doctors are marvellous for our health, but they tend to make the lousiest administrators.

Mrs Cunningham: Did you hear that?

Dr MacMillan: Yes.

Mr Plener: With due respect.

Mrs Cunningham: We have a wonderful sense of humour in the front row up here but a lot of us have told our own physicians that.

Second and final question: With regard to this bill, we have been told by persons who are running the clinics across the province—and I am not dealing specifically with subsection 7 today

because that is not what you are talking about; you are talking about the whole thing—that in fact you are going to be somewhat restricted. Since we have not heard from your group, many of the radiologists have just simply said that they may or may not be able to continue the operation of their clinics. I am wondering, with your particular group, if you share those views or if there is any more specific information that you want to add with regard to your own association.

Ms Kanwar: I guess our concerns are that we would agree with the radiologists on that point, that if the technical fees are taken out, basically we do not know where we stand, depending on what is done to either replace them or whatever—just the uncertainty. But looking at subsection 7(7) at face value, we would say that we would not be able to continue.

Mr Grandmaitre: I would like to refer to your brief, the last paragraph on page 9, "As we stated, we welcome quality control." I am very impressed by quality control, and this bill, Bill 147, as far as I am concerned, is all about quality control and quality assurance of the service. I think that amendment 7(7) is the catchment of all the quality control services provided by specialists such as yours, and you seem to be in control of things, you seem to be not only professional but you can back your past services. I cannot understand why you would be concerned about being licensed every five years. If you deliver a first-class quality service, why would you be concerned about being relicensed every five years?

Mr Plener: We don't know the rules. For instance, under HARP it merely says you are approved for a facility. The approval can be withdrawn at any time if you are not fulfilling your obligations. If whatever promises you gave or whatever conditions are not satisfactory to the director and the minister, it can be revoked. The only problem I have heard from radiologists about HARP is that there are not enough inspectors, that the inspections are not regular enough and—

Ms Kanwar: Actually, the X-ray services department of the Ministry of Health, I have been told, had budget cuts. They are supposed to have 10 inspectors and they now only have five inspectors. Several radiologists have said that.

Mr Grandmaitre: I have a supplementary.

The Acting Chair: Could you make it brief, Mr Grandmaitre? We are running out of time.

Mr Grandmaitre: Very brief. Could I ask the minister or Dr MacMillan to talk about the rules?

Can you talk about the rules of relicensing or licensing?

The Acting Chair: Dr MacMillan, the question was put directly to you.

Dr MacMillan: I am sorry; I was talking to the minister. What did you want to know?

Mr Grandmaître: Yes. These people are concerned about the rules for being licensed or relicensed. Can you tell us about the rules for licensing people?

Dr MacMillan: Would you like to do that, Gilbert, on the legal perspective?

Mr Sharpe: Sure. I have nobody on my left to pass it to when we go around the table.

The Acting Chair: You will have to hurry up, Mr Sharpe, unless they are very brief rules.

Mr Sharpe: Okay. Actually, I cannot really speak to rules since there are no rules at the present time. The concept, though, proposed is that a clinic that is providing a useful function will be renewed. In fact, the first draft we had of the legislation that did not make it to the House had annual renewals, which is the case with a number of other circumstances of licensing. I remember being at a meeting with Dr MacMillan where a number of individuals talked about the concept you have suggested, that bankers might not be so willing to underwrite the costs of expensive equipment that is only going to be depreciated downward for a year. You need at least a five-year period to entertain that. For that reason we moved the period to five years, because of the economic concern.

Certainly the concept in the bill proposes a renewal unless there is some cause in terms of quality of care or very serious problems existed through the period of licensing and have come up through inspection and not been rectified. The authority of the minister to step in at the end of the period and say that there should not be a renewal granted because there are no longer sufficient funds or sufficient need, we envisage that as an ultimate escape clause in the interests of ministerial discretion and government prerogative in terms of setting health care priorities. But it was never envisaged that it would be used; if at all, very rarely would it be used. If it were used, through the committee process an amendment was proposed and carried that would permit a petition to cabinet as a means of appeal.

The concept of the bill is of five-year renewable licences that would be automatically renewed if there was not sufficient cause to justify not renewing based on quality of patient care.

The Acting Chair: In the opinion of the chair that is a very complete answer. I allowed us to go over a minute or two because I think it is important that be put on the record. I would like to thank you very much for your presentation.

Mr Plener: If I might just state it, it seems as though you are reinventing the wheel. There is reasonable legislation there that could be amended easily and you are setting up new legislation which seems to be omnibus and seems to be for a much different purpose. It just does not seem to fit.

The Acting Chair: Thank you for that final comment.

Our second presentation of the afternoon is on behalf of the College of Physicians and Surgeons of Ontario. Dr Brian Dingle, the president, and Dr Michael Dixon, the registrar, will be making that presentation. Again, this will be a 30-minute presentation. If there is time left after the presentation for questions we will use whatever time is available for that purpose, if the committee so desires.

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Dr Dingle: To my right is Dr Michael Dixon, the registrar of the college, and I am Brian Dingle, the president of the college. Thank you for providing us with this opportunity to make a few brief comments on the amendment to section 7 of the Independent Health Facilities Act.

The college is firmly committed to and supportive of the quality assessment provisions of the Independent Health Facilities Act. These provisions will go a long way towards ensuring public protection and uniformly high standards of medical practice in such facilities. As such, we believe that all facilities operating outside of a hospital setting should be subject to quality assessment reviews and we strongly support that part of the amendment which gives the college jurisdiction to develop and conduct these reviews in a wider range of facilities.

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Among the facilities captured by this amendment are those offering radiological services. The college has participated in the development of a peer assessment program for radiology and that program is now under way. In fact, the first assessments of radiologists have taken place. The peer assessment program is a random review and has been accepted and supported by the profession on that basis since it began in 1981. While this program assesses 12 specialty groups, the more comprehensive approach envisioned in

the Independent Health Facilities Act is an important adjunct to our existing program.

At the same time, though, it is important to recognize that there are substantial differences between peer assessment and the quality assessment process envisaged by this act. Peer assessment looks at 400 doctors chosen randomly each year in certain specialities. Quality assessments will involve a structured ongoing review of everyone offering medical services in facilities to ensure that established medical parameters are met on a daily basis.

Peer assessment was developed by the college as an innovative new approach in North America to identify major problems in the practices of individual doctors. It offers suggestions for upgrading any identified deficiencies. However, peer assessment does not insure compliance with predetermined parameters of practice. Quality assessment is a further evolution of this process which looks at the outcome of all the professional activity in a facility. It can address a much broader range of concerns because it will be based on predetermined, agreed-upon criteria developed by the profession.

For these reasons, we fully support the addition of clinics offering diagnostic services to the list of those subject to quality review by the college. There is no question that this change is in the public interest. The college will work closely with national specialty societies and with physicians involved in such clinics to establish workable, enforceable criteria by which to measure quality of care. Some of our council members have had an opportunity to meet with physicians who will be affected by this amendment. All have expressed support for our work in the establishing of such criteria and developing the means for assessing quality in these facilities.

The college accepted the responsibility for quality assessments in independent health facilities because we believed that this should be a collegial program developed by the profession in a spirit of co-operation. In creating a evaluation guidelines for quality reviews, we will continue the very positive dialogue we have had with radiologists and other specialists and general practitioners in designing our peer assessment system. We believe the providers of medical services in independent health facilities must play a key role in making decisions about how their activities are assessed. As well, like peer assessment, assessments of quality of care provided will be done by peers and doctors will have the right to challenge an assessment which they believe may not be accurate.

The other issue raised by this amendment is that of the financial and business arrangements involved in turning currently operating clinics into independent health facilities. As we have expressed on many occasions, this is not an issue which falls within the jurisdiction of the college. We have never taken a position on any of the financial aspects of this legislation or its amendments, nor do we believe we should. Negotiations involving financial matters of this nature are clearly in the purview of those physicians affected by changes and the Ontario Medical Association.

However, we would urge this committee to take a long, hard look at the concerns raised by those affected by the amendment. We believe the medical profession has some serious and legitimate concerns and we believe those concerns should be addressed fairly and fully before this bill becomes law. Equally, of course, the system developed must be fair to the public. Thus we support this bill and its amendments on the condition that it should not restrict the availability of necessary medical services.

I appreciate the opportunity of clarifying once again the college's views on this issue prior to the third reading of the Independent Health Facilities Act in the Legislature.

Mr Eves: I have a couple of questions that come to my mind, having read your brief and just comparing it to the OMA's brief which was submitted yesterday. I do not know if you have had the opportunity to see it or not. They have a section on peer review and quality assurance on pages 4, 5 and 6. Their last paragraph is: "The OMA has had a long involvement in strengthening peer. If these programs are not living up to the expectations of the college, or the Minister of Health, then we submit that the college, the government, and the OMA, begin immediately to expand quality assurance under the peer assessment program."

I guess my first, most general question would be, do you think that there is a possibility of developing quality assurance in a co-operative way other than by inclusion in Bill 147?

Dr Dingle: Well, first of all you have to understand, I guess, the difference between peer assessment and quality assessment as we have identified it.

Mr Eves: I think I understand it.

Dr Dingle: Quality assessment is a planned, systematic and ongoing review. It is mandatory, it is comprehensive, it is based on predetermined criteria and it should result in appropriate action

being taken in order to resolve the identified problem.

Peer review, on the other hand, is random, it is not comprehensive, it is not systematic and ongoing but, at best, a physician may be identified once in the course of his practice during his lifetime. It is not structured on predetermined criteria but rather is relatively subjective in its approach, and the results of peer assessment do not necessarily result in appropriate actions being taken in order to correct the situation. By and large they often do, but there is no compelling component to peer assessment to allow for that.

Mr Eves: Has the college made this request of the Ontario Medical Association or of the profession before and not got co-operation on quality assurance? I guess my question is, why has peer review not addressed what you are now recognizing as a very vital concern and issue?

Dr Dingle: Peer assessment itself began in the late 1970s and has evolved to its current situation, and I suppose it is fair to say that nothing moves too quickly. Do you want to add anything to that?

Dr Dixon: Well, I think I would emphasize that the peer assessment program was brought in primarily as an educational program. It was designed to determine major problems that practising physicians might have which could be addressed in an educational manner. And the role of a peer assessment committee is to offer advice and recommendations to practising physicians who have identified deficiencies.

There is no authority under the peer assessment provision of the Health Disciplines Act to require compliance. The only option that the college really has in the event that it unearths a physician who has really serious deficiencies is to undertake a completely independent investigation and to proceed by way of a discipline hearing. That is done rarely, but because the information that is learned through a peer assessment program is not admissible in a discipline proceeding, the college is obliged to undertake a completely independent review.

Often, the types of difficulties that we find in peer assessment do not lend themselves to necessarily the type of corrections which would be offered by a discipline hearing, and really, there are not very many options. If a physician is not prepared to correct his situation, the college can either limit his practice or revoke his licence. The thrust of the peer assessment program is to try to encourage the physicians through educa-

tion, and the college will arrange education, but again, it cannot require the member to comply.

So it is a different thrust to the program. The quality assurance, as Dr Dingle has outlined, is a more comprehensive program, and there is a greater incentive to comply because, as was observed earlier in the afternoon, if a facility does not keep up its level of standards, its licence will be in jeopardy at the time of the renewal. I think that will be a stronger incentive than perhaps exists in the peer assessment program as we know it today.

Mr Eves: I would presume that the college's goal here is to provide quality assurance for the entire medical profession in various specialities. Does the so-called Reville amendment leave out any diagnostic procedures that will not be subject to quality assessment under Bill 147? I can give you a couple of examples, perhaps:—echocardiology and ophthalmology. Will they be captured by the Reville amendment? Will there be quality assurance for those diagnostic procedures and perhaps others in the medical profession?

I guess what I am getting at is, if there are some that we are leaving out, would not the better approach be—

Mr Reville: That is the question he answered.

Mr Eves: Are you chairing the meeting, Mr Reville?

Mr Reville: No.

Mr Eves: Would not the better approach to the problem be to try to treat the medical profession generally to assure quality assurance of everybody in the medical profession and amend the Health Disciplines Act and work co-operatively towards that goal, instead of capturing radiologists by an act that was never intended by the ministry, in the minister's own admission, to include them in the first place? In fact, they were told they definitely would not be included.

Instead of trying to approach this in what I see as a piecemeal approach—if I am incorrect, tell me. If everybody is captured by the Reville amendment, there will be nobody in the health profession out there who will not be subject to quality assurance once that is done. Then I may have to look at supporting the Reville amendment. But if that is not going to be done and we are just capturing one little group of the medical profession here, should we not be looking at the entire medical profession if we are going to do this?

Dr Dixon: Well, I think it would be generally agreed that this amendment, as proposed, does not capture all services that are rendered outside of public institutions. However, the amendment does capture a considerably larger number of procedures than would have been captured as the bill was originally tabled. Initially, it was estimated that some 20 facilities might be captured in the first year or so of operation of the act, but now we are looking at a number of 1,800 facilities. I think that is a very substantial jump and one which will give us, the college, if we are given that authority, a great challenge. There may well be in the future, presumably, other activity which might be encompassed by this bill or some other provision in the Health Disciplines Act or its successor.

Mr Reville: I appreciate your providing us with an easy-to-read comparison of peer review and quality assessment, and I take it your support for the amendment is related to your view that the more quality assessment you can do, the better the CPSO would like it. Is that correct?

Dr Dixon: Well, I think the more quality assessment that is available, the better the citizens of this province should like it, because I think quality medical care will be more readily available than perhaps it is now.

Mr Reville: You point out, as well, that you do not feel it is your role to comment on the financial aspects of the bill, and you have said that before when you were here. I do want to ask you this question, though. Assuming this amendment does carry, there are a great many matters that have to be resolved. As Dr MacMillan responded to a question from the member for Ottawa East (Mr Grandmaitre), basically we have the framework, but we do not have the rules written. I assume that it will take some time to write the rules, the regulations, the policies and the procedures to in fact put into effect subsection 7(7), this amendment.

Would you be prepared, as one of the stakeholders in this connection, to serve on an implementation committee that was reviewing the specific rules of the game if, in fact, this amendment does carry?

Dr Dingle: I think, once again, our stated position that the financial and business aspects of the act are not our jurisdiction would have to stand. If such a committee were looking at broader aspects of the administration of the bill, I think it is something that we might well consider. But I think we do want to keep the financial aspects at arm's length inasmuch as that is not the part—

Mr Reville: Right. I did not mean only the financial aspects. I mean there are a great many aspects about how the quality assessment might be carried out that you would be very interested in.

Dr Dingle: Yes, exactly.

Dr Dixon: Well, it would be essential that we would be involved in that because, in fact, we would be doing it.

Mr Reville: I wonder if I might ask a question of the minister while she is here. Minister, you have heard my question to the College of Physicians and Surgeons of Ontario that there will be a need to develop, in great detail and with a lot of consultation, the rules of this new world should it come to pass, and clearly we would want to see the CPSO involved, the OMA and its relevant sections, the Ontario Association of Radiologists and other appropriate groups. Would you undertake to establish such an implementation committee if the amendment does carry?

Hon Mrs Caplan: Yes. I would like to be very clear about my commitment to work co-operatively with all those who have an interest, both on the financial and economic side, but especially those who have an interest in ensuring the appropriateness of the care provided, the establishment of standards and so forth, so that we can have the quality assurance which is in the public interest in independent health facilities. In fact, it is my intention to work with the College of Physicians and Surgeons of Ontario, the Ontario Hospital Association, the Ontario Medical Association, radiologists and physicians in this province to establish an implementation committee to address the challenges and the issues that this bill presents.

Mrs Stoner: I really appreciate your giving a very concise perspective here, and particularly the comparison between peer review and quality assessment—that is most useful to us—and your support of quality assessment and the recognition of the need for it throughout the whole medical world. Can you tell me just how many doctors get reviewed in this random review annually?

Dr Dingle: I see some possibility of ambiguity here. You have in front of you, I think, this comparison which Mr Reville and you have referred to. I just want to point out that sometimes we talk about peer review as peer assessment and sometimes we talk about quality assessment as quality assurance. On the left-hand side is peer review. That is what we are currently doing. On the right-hand side is quality assess-

ment, which is what we believe we would be doing under the Independent Health Facilities Act. It occurred to me suddenly that some confusion might occur and I wanted to point that out.

At the present time, I believe the number is 400 physicians who we assess on a relatively random basis. There is some targeting where we have determined or predetermined there may be certain areas which we want to specifically assess, but within that general area it is a random assessment and it is about 400 physicians per year.

Mrs Stoner: Out of how many?

Dr Dingle: Out of 22,000 or so physicians in Ontario.

Mr Adams: What is the meaning of "random"? Do you mean statistically random?

Mr Reville: Here and there.

Dr Dingle: Yes. Within those subgroups that we target, yes.

Mrs Stoner: You talked about the great challenge that was going to be involved with the quality assessment, and I would like to know a little bit more about how the college will be involved and who is going to pay for it. It is going to be a very expanded program. Can the college afford it? Does the ministry participate? How does that all work? I know you said you were going to work with the minister and the minister said she is going to work with you on the implementation, but maybe you have some sense of how that is going to work.

Dr Dixon: Mr Reville addressed a similar question to me in our earlier appearance before the standing committee when you were not a member, but I might just respond again.

The college sees basically two stages to the development of a quality assurance program. One is the development of the parameters or the standards against which the various activities will be assessed. This is very much a professional activity in which we hope to work in close co-operation with the Ontario Medical Association, and especially societies in the country, to help us develop what are standards or parameters of practice which are generally accepted as reasonable criteria, against which to compare practice. That is certainly an activity which we hope the college will get involved in very quickly.

The other stage of the process will be the actual ongoing maintenance of a quality assurance program which has a very significant implication in terms of information gathering and profession-

al visits to these different facilities. We certainly expect and have been assured that the Ministry of Health will enter into some agreement with us analogous to the agreement we have in respect to the medical review committee, which is an activity that we undertake under the authority of the Health Insurance Act on referral from the general manager of OHIP. But we would think that without such support, it would be virtually impossible for us to undertake such a large initiative, without such funding from other sources than our own revenues.

Mrs Stoner: I also appreciate—

The Acting Chair (Mr Elliot): We do not have too much time for a line of questioning here.

Mrs Stoner: I will be quick. I also appreciate that you have not addressed the financial questions or the economic questions in your brief. Maybe you have no involvement in this, but does the college have some involvement with the question of ethics or conflict of interest or those kinds of questions?

Dr Dingle: Yes we do, and in that sense I suppose it is incorrect for us to say we are not involved in the finances. Our statement here really refers to the setting up or the changing of the Independent Health Facilities Act from the current acts, but yes, where a conflict of interest arises and where ethical considerations occur, we are very interested. Although it is difficult to know now, we suspect that this may be more apparent under this act than it currently could be.

Might I just also finally comment as well that whenever there is a—

The Acting Chair: Excuse me, the clerk is checking to see if we need to go to the House. Relax for a moment.

Dr Dingle: Is that a fire alarm?

The Acting Chair: The audience may not be aware, but when the bells go, we sometimes have to go, sometimes not, and now we are on orders sometimes that we just have five minutes to get there.

Hon Mrs Caplan: Is it a division?

Mr Reville: It is a vote on Bill 36.

The Acting Chair: I am sorry. It is going to be a vote on a bill, so we have to go.

Hon Mrs Caplan: Can we ask that you wait? We will be back in about 10 minutes.

The Acting Chair: We will pick up the agenda where we can, but the House takes precedence, so we have to go.

The committee recessed at 1631.

1640

The Acting Chair: We will carry on the hearings. At the sounding of the bell, we had approximately five minutes left.

Mrs Stoner: We were discussing standards, ethics and conflicts. My question is, there has been reference here to self-referral and the concern about that, but are you aware of legislation in certain states in the United States which prohibits ownership of facilities by physicians because of the conflict question? Can you comment on that, if you are aware of it?

Dr Dixon: We are aware in general terms of the thrust of the Stark bill that I believe will address this particular issue. We do have conflict-of-interest regulations in Ontario under the Health Disciplines Act. The difficulty with them is that it is very unusual for us to be able to get through the corporate veils that surround these arrangements so that we can actually get any evidence that in fact the owner of a facility is the physician who is referring the patient to the same facility, but we suspect that it does occur from time to time.

Mrs Cunningham: I am basically asking some questions of information, and it has to do with this comparison. The quality assessment column is the one that deals basically, I think, with facilities, correct? Is that what it is for?

Dr Dingle: Yes, that is correct.

Mrs Cunningham: Is this something you have been concerned about for a period of time? Is this something that you would like to have been involved in or did it just sort of happen because of these discussions? When did this take place, as a need?

Dr Dingle: Ever since the beginning of peer assessment, or peer review, as it is referred to here, we have obviously continued our discussions internally as to what the best form of continued assessment of physicians and facilities is. When this act came up, of course, it became more of an issue because we were suddenly aware that we would be seized with the responsibility of carrying it out. This was both a challenge and an opportunity for us.

Mrs Cunningham: If this act had not come up, this would still have been one of your goals, is that correct?

Dr Dingle: Oh yes, that is correct.

Mrs Cunningham: If it was important, could you achieve this process by amending the Health Disciplines Act? Is that what you would in fact

have had to do to achieve this process of quality assessment?

Dr Dingle: Yes, I believe that is a fair statement. Indeed, this was discussed with respect to the health professions legislation review over the last four or five years.

Mrs Cunningham: I am happy to hear you say that, because I have been doing my preprimer-level homework in London and I was assured that this had been a concern of your group, your professional responsibilities, for a number of years.

My next question then has to do with what you stated when you said some 1,800 facilities, it looks like. I will use your word, the great "challenge," and I would agree with that. Would it not make more sense for all of us who at some time in our lives, or our neighbours', now have to rely on a facility to have a global policy that reached into all of the facilities by amending the Health Disciplines Act? This one seems to be somewhat exclusionary if we go this route.

Dr Dingle: You can view it that way or you could view it as a first step towards that particular end. I think it would be wrong to attempt to do this kind of quality assessment with respect to all 22,000 physicians in Ontario next year. I think that would be very difficult to do, but as a long-term goal I think that is appropriate. This is a first initial chunk that is an important one that we can see.

Mrs Cunningham: Then my next question is this—

The Acting Chair: You are going to have to make this the last one.

Mrs Cunningham: Yes. As a member of the public who may go to a facility that is subjected to this particular quality assessment, for good reasons, you are telling me, why would I, in my position of representing the public, go for what you call a random approach to the improvement of performance? Assessments are to improve the quality of performance of either individuals or of operations. Why would I go for a random but total assessment of physicians but not a random but total assessment of facilities at this point in time? Would it not just mean that you would be able to do less reviews initially of the total picture than the reviews you intend to do of part of the picture?

Dr Dingle: I am not quite sure I understand completely. At the present time, our peer assessment program captures 400 doctors per year, which, if you divide 22,000 by 400—I mean, it is going to take—

Mrs Cunningham: But it is a random of the total.

Dr Dingle: Yes, but you only get caught once.

Mrs Cunningham: I understand that. It is a random of the total.

Dr Dingle: That means it takes 50 years to assess all 22,000 physicians in Ontario and many of them have stopped practising by that time.

Mrs Cunningham: Yes, but at least I know every type of physician is subject to that kind of a review. With this approach, I do not know that every type of facility is subject to that review. I know that only the facilities that fall under the Independent Health Facilities Act, which were the initial surgical ones and now the radiology clinic, but what is missing? I am not sure about what is missing, what is not covered.

I think I should have the answer to that question, and I will ask you for it, but I just do not understand this kind of an approach. It seems a matter of convenience, almost political convenience, that we would take that approach. As a person who is responsible, you have an opportunity here to go for all of the facilities, and of course the mechanisms you set up may be somewhat different for different kinds of facilities, but why just choose them? You say it is a beginning.

Dr Dingle: Yes, why just choose independent health facilities?

Mrs Cunningham: What will we have to do in order to include the other facilities, the ones that are not covered by this act? Will we have to amend the Health Disciplines Act?

Dr Dingle: Quite possibly, and the Public Hospitals Act, yes.

Mrs Cunningham: Right. So why would you not come forth today and say: "Let's amend the Health Disciplines Act. Maybe our targeting would be for these facilities, but certainly, inevitably, in order to capture all of the facilities where medical technology and medical services are being provided to the public, eventually this Health Disciplines Act will probably have to be amended"? Is that not true?

Dr Dingle: I believe that is correct. I think it is fair to say, though, that we are not starting from zero peer assessment. As we indicated the last time we presented to this committee, we are starting from a large number of different methods by which the quality of medical care is assessed by the college, and I will not go through those again, but our peer assessment program is one of the best in the world and probably is the

forerunner in all of North America for individually assessing physicians.

I think this is just a natural evolution. It looks to us a small enough chunk that we can deal with initially and then expand upon subsequently. It is a proposal that has been made by the government and by this House and we agree with it because it is in the best interests of the people.

Mrs Cunningham: Because it is the beginning.

Dr Dingle: That is right. We have entered into discussions with respect to continuing competency in the health professions legislation review, but that is still an ongoing process, four years back and four years—

Mrs Cunningham: But I think if you could have started from scratch, you probably would have amended the Health Disciplines Act sooner so that you could have in fact had the support to do these quality assessments in any facility across the province.

Dr Dingle: That would certainly—

The Acting Chair: I am going to have to interrupt here. This is the fifth question since I said she could have one last question.

Mrs Cunningham: The answer was that would suit—excuse me.

Dr Dingle: I am sorry.

Mrs Cunningham: You said that would suit—

Dr Dingle: No, I said that would certainly be fine with us, yes.

Mrs Cunningham: Thank you.

The Acting Chair: A short one, Mr Keyes, since Mrs Cunningham is already three or four minutes overtime.

Mr Keyes: Thank you, it is just to clarify in the minds of the public who watch these phenomenal debates on TV and then read all of Hansard. Yesterday we had the OMA and three divisions of it and they came out strongly opposing this particular amendment. The college of physicians and surgeons is looked upon by the majority of the public as the governing body, in a sense, of doctors, and you have come out in support of it. Could you perhaps simply clarify why the college of physicians and surgeons supports an amendment to a bill which the doctors themselves, through their organization, the OMA, do not?

1650

Dr Dingle: Our mandate and purpose is to serve and protect the public with respect to its conflict with doctors. As such, quality assessment is an important aspect to protect the public

from perhaps less than adequate practice of medicine. When the heated debate starts up and it goes back and forth like this, sometimes people fall into the tacit assumption that the quality of medical services is not good out there. It is in fact good, but this is just one more step to make it better.

The Acting Chair: Thank you very much for your presentation. Our next presentation is on behalf of the Agincourt X-Ray and Ultrasound Clinic. Dr G. S. Bablad, the owner of that facility, will be making the presentation. Since this is an individual presentation, the time allocation, by instruction of the committee, is 15 minutes.

AGINCOURT X-RAY AND ULTRASOUND CLINIC

Dr Bablad: Thank you for giving me this opportunity. I am alone and I am nervous.

First of all, I am probably the animal you are looking for. I have practised radiology in a private clinic for the last 21 years and I have been alone. In fact, I have always felt alone. You come into this world alone and you go alone. I am at the very crossroads right now. You have to forgive me if I am going to be emotional, because when I see the mask-like faces of the royal college and I hear the words "assessors" and "inspectors," I feel like a bloody thief in this house.

I am really glad that you are here, Minister, because I have been holding this for three months and I have heard nothing. I heard nothing but innuendoes. You have made this whole community of doctors feel like they are a bunch of thieves.

This is the same college of physicians and surgeons. I had my American boards. I have five years of radiology in the United States. I am certified by the Canadian certification of radiology. They asked me to do three more years of radiology training here in this country. I did that, because this was the country I wanted to be in. This was the Liberal government that, when I applied for immigration, sent me a telegram with a number. That is how much they wanted me, and when I come here, these guys in the ivory towers are going to tell me I need peer assessment, peer review, inspectors and assessors? No, thank you.

There are thousands out there today looking after their patients. It is a very, very hard life these days. We have all kinds of problems; 30 per cent of general practitioners see their patients and do psychotherapy. There are single mothers,

there are taxes, there are assessors, there are inspectors, there are housing shortages, there are many, many issues that we have here. The last thing we need is to control doctors. I do not think they need to be controlled.

I am sorry, but I am very emotional. I have been keeping this three months in my heart.

We do not need this. If you look at the history of medical practice in this province, you will be flabbergasted. There were price controls when the Trudeau government was there, so we had to take no increase. Forget about increases; you are telling us that we need inspectors, assessors, reviews and more reviews. What the heck is going on here? I do not know.

I was trained to be an academic radiologist. I did neuroradiology for a year. I did one year of paediatric radiology and I went looking for a job and there were no jobs for me. I was five foot five and I was a bit tinted. Perhaps because of our funding shortages neuroradiology did not exist as a specialty, so I was forced to go and do private practice of radiology.

I have seen some very lean years. My wife was nine months pregnant and she was typing my reports, and these guys are going to tell me that you are going to help with your assessment review.

I have never been audited by Revenue Canada. I have never had a letter from the college of physicians and surgeons. There are thousands out there who do not like this. They do not see this. The other day my OMA president gave you the statistics and she said, "We do not like what we see here."

I am sorry; I am very emotional here. I have a brief here that I will mention. In this brief I am going to touch only on HARP and this organization. But before I forget my conclusion, I would like to read my conclusions first, because I am very disturbed and I might forget my conclusions.

You have a ton of paper here. You have all kinds of statistics here. You have all kinds of numbers here. What do they do? Nothing. That is just tuition, that is just tutoring. Knowledge, the real knowledge, comes out of intuition.

You have the majority Liberal government here. Is it listening? Is it intuitive? Or is it going to toe the Liberal line?

We have said here, day in and day out, in 12 hours of hearings, that there is HARP, there is the peer assessment, there is review; they can extend it.

Minister, I do not know how to say this to you. Let me finish my conclusion here. There are

three phases in life a man or a woman goes through. You go to school and you have the peers at home, you have the family, and then you sort of become a teenager and you are a sceptic. You stay a sceptic; thousands die sceptics. Then you go to university and you have exposure to all of this freedom, all this democracy I see here, and you become a cynic. You have got more numbers. You become a cynic. All of them die cynics, but there are a few knowledgeable, intelligent, contemplative individuals who become wise.

All of what I see here is cynicism. Forget about cynicism. Only the Liberal majority government, only the MPPs and of course all of the other members who are not here—I do not know individually who are PCs and who are other members—have this duty to assess doctors, to go through all of these data. Use your intuitive faculty. Is this medical legacy here in Canada that was created by Dr Banting—you know, we have many living and dead great doctors here.

In 1928 Dr Burke wrote a book called *Cosmic Consciousness*. His book today is in print and all over the world it is a standard text for metaphysics and theologians as well as visionaries. That was a Canadian doctor. Dr Bethune worked in China. All Chinese revere him. We revere him in Canada very little.

We have many doctors, like Dr McRae, who wrote a book on spinal cord injuries and the cervical canal. We had Dr Campbell. The man had two kidneys shot up. He went to the academic hospitals here doing radiology. There are many radiologists out there who are lawyers as well as physicians. There is Dr Bachai. He was a chief of radiologists; he was also an engineer. We have Dr Chris Rose here. He is a Rhodes scholar, he is a lawyer by profession and he is also a medical doctor.

Do not tell me that we do not like some money thrown at us. There is no motivation in this world without having some financial incentive behind us, so do not tell us that we do not make money. If we do not make money, we close our offices.

I have closed my office twice. Since I opened my office, I have seen lean years. In my area there had only been one office since 1971. There were several opened. Did I go and say I will cry from competition? No. I hustled. Luckily, there was the population increase and people were beginning to know the five-foot-five, tinted guy can be there all the time when they need it. I was there and I am going to be there as long as I want to be there. Nobody is going to scare me with peer review and all this big jargon, with the

lawyers sitting there. The lawyer's assistant told me the other day, "We are focusing on you." Nobody is going to focus on me. We live on divine grace, not innuendos, not scandals.

I apologize for my burst of emotion, but somewhere along the line we all have to voice our opinions. We have to appeal to the conscience of this committee.

Figures and facts can deceive you. There was a great poet of the magnificent east. He once said, "When helpers fail and comforts flee, help arrives, from I know not where." He was in despair sometimes and he said, "A bed of grass, the skies above, the bread I dip in the river; this is the life for a man like me, this is the life for a man like me." He was not even aware that today we cannot even dip our bread in our rivers. We cannot look at the sky and say, "This is green, good sky."

These are the times we live in, Madam. This is all perhaps a mirage; this is perhaps a smokescreen. Are you trying to tell us you want to control us? As far as I am concerned, I am a fatalist. I will go out of business tomorrow. I have been there 21 years. Somebody will feed me.

1700

Give me one more minute because I am going to talk to you about this quality control thing. I want to really apologize for all this noise I have made, but I would like to quote one more thing. As I said, I am a fatalist. They say:

The moving finger writes; and, having writ,
Moves on; nor all thy piety nor wit
Shall lure it back to cancel half a line,
Nor all thy tears wash out a word of it.

So why bother? But before I conclude, in my brief, which I have written with a lot of—you know, I tried to give some basic structure. Who works in the X-ray departments? It is 90 per cent women who work there. They are radiology technicians. Somehow they like this field. They work there because there are no shifts. All of this is in my brief.

Let me touch very shortly on this HARP bill. I was in conversation with Mr Ritchie, who is a chief there. It is compulsory and mandatory; he can inspect us any time, any place, any day. All he has to do is call us and say, "We want to inspect." The original mandate of this structure, as I understand this information I got from a general manager who worked at the HARP office of the Ministry of Health before, is they are supposed to have one director, two managers, one senior inspector and 10 inspectors and other ancillary staff.

Today, I understand, there is one chief, no managers, no senior inspectors and only five inspectors. I just heard from another person that there are only four inspectors. Can you tell me why? I understand the reasons for that are inadequate funding, inadequate salaries for the manager and inspectors, the main office is located in Toronto and inspectors have to travel far throughout the province, including the north, for inspections. Their wages are no better than a senior X-ray technologist working in a private office. Why then has this government, which appears to be so concerned about quality assurance, not kept this ministry well funded?

I must say that under these very trying circumstances, Minister, the radiation protection branch has done a marvellous job. Their inspectors are polite, they are professional and they are thorough. I also understand—I repeat, I also understand—that fewer and fewer private clinics are required to be sent notices after their biannual reports are received. We send biannual reports after inspecting these facilities at our expense. We send them the reports and then they can send out saying that you are shut down because you are not good or you need this recommendation or you close for two days before you correct this, you cannot operate.

There are total, comprehensive, complete, mandatory inspection services we have in place. You fund them more, you increase the inspectors and I will be the first one every six months to have that examined. If worst comes to worst, I will pay for this biannual inspection myself. We pay now anyway. So I have some recommendations there: increase the funding for the radiation protection act—

The Acting Chair: I have to interrupt, Doctor. You have got about one more minute, so you might want to use that to advantage to put on the record whichever ones of the recommendations you have time for.

Dr Bablad: Once again, I would like to apologize for my emotional outburst, but I have just kept it too long. I truly want to apologize. In closing, if I have taken a second, I would like to wish our Premier (Mr Peterson), who is heading to Meech Lake—and it is a very important issue nationally—I wish him luck. We are in some ways like Meech Lake. We feel like western provinces ourselves. Yesterday our Premier has said, “You know, this is all created by the Mulroney government because it has created so much tension, putting one people around here.” Let’s not do that on a small scale here. We do not want divisions, Minister. We will work with you. We

will take anything, okay? We are afraid of the OMA; we are afraid of the royal college; we are not afraid of ourselves. Thank you. I will field any questions.

The Acting Chair: I am glad the minister was here to hear your presentation.

Our next presentation is on behalf of the Hamilton Academy of Medicine, section of radiology. Dr Graham Thomson, the director of that department at the Henderson General Hospital, will be making the presentation.

HAMILTON ACADEMY OF MEDICINE

Dr Thomson: May I first take this opportunity to thank the committee for giving me a chance to present this brief on behalf of the Hamilton Academy of Medicine.

The Acting Chair: Could I interrupt? The doctor has submitted a brief previously, and it is exhibit 3 for the benefit of the committee. Sorry to interrupt.

Dr Thomson: Not at all.

The Acting Chair: Go ahead, doctor.

Dr Thomson: This section represents approximately 45 radiologists ranging from largely academic physicians to radiologists engaged solely in private practice. Most of us are involved in both teaching and research as well as clinical radiology, and we therefore represent all shades of radiological opinion. Despite this very diverse background, however, the section is unanimously and unequivocally opposed to amendment 7.

It is our contention that while the reasons behind amendment 7 are laudable, the effect in the long term will be to cause a significant decrease in access to imaging services. In addition, the amendment as it stands has the potential to impose severe financial penalties on existing practices, many of which provide and have provided for many years a wide range of community radiological services in an efficient and ethical manner.

As the chairman has indicated, this brief has been precirculated, but I would like to address only four issues which we consider to be of particular importance to this committee’s deliberations. First, I would like to address the issue of what constitutes appropriate and desirable radiological practice. Second, I would like to discuss the technical tariff. I would like to discuss, third, the issue of inspection and licensing or accreditation, and fourth, the important concept of quality assurance, of which you have already heard a great deal. Finally, I would like to make some recommendations to the

committee as to how we believe we can make progress towards our common goal of providing accessible care while doing our utmost to contain costs.

As a brief background, I would like first to review the role of the radiologist. Radiologists are physicians trained to provide consultation in imaging modalities. They deal not only in the interpretation of imaging studies but they also undertake imaging procedures and advise clinicians as to the appropriate investigations to undertake. The radiologist today is an integral and important part of the clinical team and relates progressively more closely to his colleagues in other disciplines than he has ever done before.

In order to fulfil these responsibilities, therefore, a radiologist must do far more than simply interpret plain film X-rays or ultrasound examinations. Consultation and education are fundamental to the practice of good radiology and can only be provided by a qualified physician who is available to his clinical colleagues. It is clear, therefore, that inappropriately qualified physicians and radiologists who do not base themselves in the community which they serve cannot fulfil all these roles.

I would like finally to emphasize to the committee that studies performed by diagnostic radiologists are undertaken only following referral from an independent second physician and frequently involve direct consultation. Indeed, I would emphasize that rather than causing increased utilization, radiologists are being placed in the position of acting as gatekeepers to rationalize the demand for diagnostic services.

I would like now to address briefly the issue of the technical tariff. Radiologists in private practice are compensated for their services by means of a professional fee which, as you know, is a reimbursement for the professional services rendered. In addition, unlike other specialties, radiologists receive a technical fee which is intended to cover operating expenses.

The overheads incurred in private practice are considerable. Such expenses are not incurred by any other form of practice, and as a result of these expenses, most practices require very large infusions of capital to commence operation and require stable, long-term environments in order to amortize those costs.

It is therefore a very great concern to radiologists that any funding mechanism which the ministry might wish to put in place be such as to address the real costs of imaging provided in the community. If funding to such facilities is decreased, it will become impossible to maintain

services and community radiographic clinics will gradually cease to exist. Over a period of time, of course, this will result in a significant loss of access to care since hospitals cannot cope with the additional load.

I would like to comment briefly on the relationship between private practice and hospital practice. The committee has heard from chairpersons of boards of hospitals that their strategic planning has been upset by private facilities being built adjacent to their hospitals, with a potential reduction in the hospitals' outpatient revenue.

It is my understanding, however, that these premises were facilities owned by nonradiologists and that the radiological services were provided by non-community-based physicians. As you know, we are opposed to these concepts. In our own institutions, the radiologists practise community-based radiology only with the agreement and permission of their own hospital boards and in specified locations.

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I would like next to deal with the issue of licensing, which is provided for under the terms of the Independent Health Facilities Act, and I would say at the outset that we agree wholeheartedly with the concept of accreditation for the purpose of achieving and maintaining high standards. We disagree fundamentally, however, with the concept of a centrally placed body, such as the ministry, deciding without appropriate radiological input where and when practices may open or provide services. If such decisions are to be made, then they should be made by locally based physicians familiar with local facilities and local requirements.

No radiologist, I believe, should fear inspection or accreditation of his X-ray facilities provided that this process is fair, provided the parameters are agreed on and provided it responds to the specific needs of radiological practice. In addition, appropriate mechanisms need to be in place for appeal. What is of concern to us, however, is the potential for misuse under this bill and for the possible arbitrary removal of licences from existing facilities.

An essential component of accreditation or licensing is that the process must have built into it a stability factor. As I have said, most practices require a minimum of 10 years to amortize their capital. The licensing of existing practices must take this into account. The Hamilton academy therefore requests that the standing committee consider the following proposals with respect to accreditation:

1. That accreditation be granted for a period of time sufficient to provide a stable environment. We suggest 10 years with a mid-term review;

2. That licences be granted to facilities rather than to individual physicians since many physicians operate in groups and this would allow for change in composition of the groups;

3. That licences be granted, in the first instance, to all existing facilities and that new licences be granted following a demonstration of need within the community. We believe, however, that local organizations would be the appropriate bodies to determine such need;

4. That licensing should be supervised by the College of Physicians and Surgeons of Ontario with appropriate avenues of appeal to the courts should licences be withdrawn or temporarily suspended;

5. That licences should be transferable in order that the single-handed radiologist may be able to sell his practice at fair market value without it being deemed that the licence itself is being sold.

Finally, I would like to deal with the issue of quality assurance. The standing committee has been quite rightly concerned with the whole concept of quality assurance in radiology practice. This I think has been dealt with extensively in several briefs, including that of the college, and I would reiterate that safeguards are already in place for X-ray services in office premises with respect to both safety and quality.

There are, I think, three mechanisms already available for ensuring high-quality care. The first I think is fundamental and it involves the utilization of appropriately trained physicians and technologists to provide and be solely responsible for imaging services. A physician's reputation is his stock-in-trade and a radiologist must stand behind the quality of his work and be accountable for it.

Second, the HARP act ensures that all X-ray facilities are inspected regularly by the ministry in order to ensure safety of radiological practice. Most practices that I know of already provide in-house quality assurance at their own expense on an ongoing basis.

The third arm of quality assurance or a quality assessment program consists of peer review or assessment, or whatever you wish to call it. Ontario radiologists have been active in promoting peer review under the auspices of the college of physicians and surgeons. Such peer review is in existence. At the present time, it is admitted that this has been limited to random sampling, but such regulations under the Health Disciplines Act can easily be changed to mandate the

appropriate inspection which we feel is necessary for all imaging facilities throughout the province.

In conclusion, the section of radiology of the Hamilton Academy of Medicine requests that the standing committee consider the following alternatives to amendment 7 which will address the issues of cost containment, quality assurance and appropriate utilization, and we have two:

1. That licences be given to all existing imaging facilities with ongoing accreditation taking place through the College of Physicians and Surgeons of Ontario working with the OMA section of radiology;

2. That a utilization review group be formed which consists of radiologists, the OMA, the ministry and the college, this group to be responsible for the provision of informed utilization review of existing practices. Such a group can liaise with local radiologists and hospitals through groups such as our own regional radiology advisory committee to determine the need for imaging.

It is therefore quite unnecessary to invoke Bill 147 or to change the T tariff to attain the goals which we all wish to achieve. HARP and college inspection as presently constituted can do the job, and if there is any doubt about their ability to do the job, then amendments to the appropriate pieces of legislation would achieve these goals in a more rational and less random way than Bill 147.

I firmly believe that the Minister of Health in Ontario has the good fortune to preside over radiological services which are as effective and efficient as any in the world. Ontario should be proud of its radiological community, which has responded to dramatic growth in an exciting and innovative specialty in a very efficient and rational manner. I therefore earnestly request that the members of the standing committee reject amendment 7 in favour of the recommendations we have made.

Ms Oddie Munro: As a point of information, the independent radiology centres have a range of services that they perform, and I think the college of physicians and surgeons uses that as a focal point on where to begin for the quality assurance programs. I am wondering if you could give me some idea of what I would call routine services, the percentage of routine services as compared to the heavier emphasis on true research and development services provided and if you could then compare that with the kinds of services that are provided in hospitals.

I guess what I am trying to look at is—and maybe this is the real question—is there a

harmony between the teaching hospitals and the kinds of service that are performed in the independent clinics? I would hope that would be the case if you are looking at quality assurance.

Dr Thomson: Yes, I think there is. The first point I would make is that in many instances the physicians providing the services in hospitals and in private clinics are one and the same people, not always but frequently so. The kinds of services which are provided in private clinics range across the spectrum of radiological activity from ultrasound, to fluoroscopy, to plain film examinations.

Clearly there is no computerized axial tomography available in private practice, clearly there is no magnetic resonance imaging and we do not do interventional procedures except in hospital. But there is indeed a very close relationship between the two and there is no question that the hospitals cannot take up the load which is currently being done in the private community setting.

Ms Oddie Munro: I just wanted to get that straight in my own mind.

The Acting Chair: Thank you very much for your presentation. Our next presenter is Dr Richard Sloan. Go ahead.

DR RICHARD SLOAN

Dr Sloan: I very much appreciate the opportunity to present this brief to you as an individual diagnostic radiologist from Sudbury. I have been in radiological practice for almost 20 years in Sudbury and divide my time between hospital and private office practice. My presentation is a northern perspective on a personal basis.

I guess what prompted me to submit this brief was the total and abrupt change in the intent of Bill 147 by the submission of the amendment to section 7 of the bill by Mr Reville of the New Democratic Party. The intended coverage by Bill 147 was for some 20 facilities, but the amendment in question extends the bill to now cover, I guess, from what we have heard today, nearly 1,800 facilities. This amendment certainly woke up the sleeping dogs.

The list of billings supplied to Mr Reville by the Ministry of Health by OHIP prompted what I call a "Bud Germa reflex." Remember a few years ago when it was alleged that Mr Germa, the then sitting NDP MPP for Sudbury at that time, dropped a so-called \$100,000 list on Queen's Park Crescent for perusal by the press and, very quickly, the public.

The figures of \$4.1 million, \$3.75 million and \$3.08 million really have made Mr Reville

salivate, so he introduces the amendment. What he did not do, or did not want to do, was investigate the numbers and the reasons for them, yet there are very legitimate routes he could have followed to see that this was legitimate billing. Bring on the elephants to kill the ants.

I would like to also point out that Mr Reville's statement from Hansard stating, "Diagnostic radiology, it is one of the anomalous operations in the health care system whereby a fee over and above the insured service fee is allowed and is paid for," is incorrect and a malicious, purposeful or otherwise, falsehood.

Diagnostic radiologists, for billing purposes under OHIP, have access to columns T and P as set out on page 49 of the schedule of benefits from the Ministry of Health dated 1 April 1988.

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Let me give you some historical comments. The first private diagnostic radiology office in Sudbury opened on 11 November 1975. This was a response to repeated urgings by the three Sudbury hospitals, the Sudbury Memorial Hospital, the Sudbury General Hospital and the Laurentian Hospital, to take the then nonprofit outpatient services away from the hospital setting; ie, it was a debt service. So we did.

Then the methods of payment changed, outpatient services became more attractive to hospitals. They got upset because we were doing a significant number of outpatient services in private offices, and they wanted them all back.

After that, second, came diagnostic ultrasound, and I personally sat down with the assistant administrators of the three hospitals, or their financial officers, to discuss the possibility of a joint venture in private office ultrasound. The hospitals subsequently turned down the proposal, as it was probably non-profitable and a money loser. Ultrasound in the radiology private facilities started shortly thereafter and presently does a needed service in the community.

Third, and just recently, came nuclear medicine into the private office setting, a venture also offered in concert with one of the hospitals but virtually ignored. So please note the step-by-step missed opportunities of the Sudbury hospitals.

Office radiology in Sudbury now provides services to 70,000 patients a year, with 40 employees and an annual payroll of about \$1 million. Compare this number of patients with the total outpatient volume for the last fiscal year in all three general hospitals, totalling a little over 61,000 patients. Within the offices there are hundreds of thousands of dollars of modern radiological and diagnostic ultrasound equip-

ment financed privately through local lending institutions. This is a business venture within the community, for the community, used by the community and looked on favourably by the community.

There are no self-referral examinations in private radiology offices in Sudbury. Every patient for an imaging test is referred by a licensed medical practitioner, either a family physician or a specialist. There are already stringent controls in place for the operation of diagnostic radiology facilities, both on the technical and professional sides of the practice. Please note the Healing Arts Radiation Protection Act dated 1980, amended 1984 and 1985, along with the HARP guidelines published in June 1987 by the Ministry of Health.

The HARP Act and its guidelines are stringent in their requirements. Every day in office practice there are quality assurance programs carried out. Every six months there is far more complicated and stringent testing done on every machine in every office, and we have the records to prove it. It is interesting to note that when all this started, where did the hospitals borrow the sophisticated equipment to do all the testing under the HARP Act? From the private office. The Ministry of Health is deeply involved in the HARP Act; just how much money do you want to waste to duplicate a parallel service to the HARP Act?

The College of Physicians and Surgeons of Ontario is the regulatory body directly concerned with medical practice, and what it is involved in is mandatory peer review. I stress "mandatory," not voluntary. What we do not need is a duplicate regulatory body somewhere out there costing millions of dollars per year. Quality assurance and peer review have never been, and will not be, resisted by diagnostic radiologists. The Ontario Medical Association section on diagnostic radiology began programs before quality assurance and peer review became buzzwords to the Ontario Hospital Association, the Ministry of Health or the College of Physicians and Surgeons.

In fact, the OHA bitterly opposed quality assurance and peer review programs set up by the OMA section on radiology in the 1970s and early 1980s, but I can tell you that all Sudbury facilities, including hospitals, went through that particular program successfully. Quality assurance is mandatory, peer review is mandatory and licensing is not a problem, although the terms of licensing may be a problem, for me, nor for my radiological colleagues.

I strongly urge you to weed out the self-referring practices, the nonspecialists in diagnostic imaging, but do not shoot the horse when the fly might be the problem.

What does the future hold for northern Ontario and, specifically, Sudbury? If Bill 147 and the amended section 7 is passed by the Ontario Legislature, then I can only predict chaos with diagnostic radiology services. This bill and its amendment are brought forward for only two purposes: one, to control the volume of imaging services, and two, to limit the dollars in the provision of such services. I can tell you quite frankly that there will be a delay in services, prompting long backlogs of patients and, eventually, old diagnostic equipment that will be unsafe, outdated and unable to get the job done.

Do not look to hospitals to take over and provide more services. None of the Sudbury hospitals has fluoroscopic equipment for routine fluoroscopic studies like stomachs and barium enemas that is newer than 1974. When a private enterpriser needs to update equipment, he or she goes to the bank, borrows and pays off the moneys needed for new and safe equipment. Private facilities do not look at long, unreasonable expectancies for fluoroscopic and general radiographic and ultrasound machinery. The OHA and, by inference, all hospitals, always look at the longest life expectancies. Please refer to the so-called MIS 1985 listing. It is the last revision.

The College of Physicians and Surgeons of Ontario, directly or indirectly, by setting guidelines for practice, will add to the cost of the system. Please note that the CPSO not so long ago issued proposed guidelines for the investigation of suspect deep venous disease of the legs. This has, in Sudbury, prompted a threefold increase in venograms but not with a similar yield in positive disease. Add to the cost of these tests callback hours for technicians, special visits by specialists and fees to radiologists for performance of the tests. These spell dollars, and that is just one disease. Can you imagine the escalation of costs if the college publishes a blue book on how to investigate disease processes?

District health councils: Let me state that not all areas of this province have these delightful organizations, but I predict that the burden of the nonprofessional services side of diagnostic imaging will fall into their laps if the amendment is passed. Can you imagine this specific group making decisions on independent health facilities? These councils, whether we like it or not, are politicized, and I dare say where I come from,

language and religion also play a strong role, as they have for years in the health care field. Do not bet on district health councils making urgent, rational decisions on purchases of equipment when the wheels fall off, but let the current private owner go to the bank, borrow the money and buy the equipment at his or her own risk.

My recent conversation with the executive director of the Manitoulin-Sudbury District Health Council would lead me to believe that she does not know what the act or its amendment implies and to what extent the council's community responsibilities might well be. The district health councils will not want the problems or the responsibilities to act as another buffer zone.

You must realize that there are no mechanisms in place for carrying out the intent of Bill 147 or its amendment and that there is no concept of cost or impact on the communities. But I can predict to you that it will be costly; it will slow down the system; equipment will be outdated, unsafe; there will be fewer jobs for office staff and technologists. This reflects on community college programs and the loss of jobs for some, like single mothers, more added Unemployment Insurance Commission benefits and then welfare.

Licensing, quality assurance—fine. Remember, the HARP act does exist. If quality assurance is the sole goal, and I do not believe it, then amend the HARP act and get qualified inspectors to see the quality of work we do. I might well some day be the inspector, because they are going to look to radiologists to do a lot of the quality assurance. So, do not think that I am schizophrenic, that I am good in the hospitals but I am awfully poor in the private office. The quality is as good in the private office as it is in the hospital.

Do not be fooled by Mr Reville's knee-jerk reflex. The system as it presently exists does work. Please do your utmost to defeat the amendment to section 7 of Bill 147. Look ahead. See the realities and pitfalls. This is money and volume control legislation under the guise of quality assurance and peer review, and do not be fooled by it.

Mrs Cunningham: Thank you sincerely. I really appreciate hearing from what we call front-line workers, and I thank you very much for coming all this way to make your presentation. You have spoken on behalf of a lot of physicians who could not be here.

I have a couple of questions. We know that HARP needs more qualified inspectors. Everyone I have spoken to has advised us that we could

do a better job if we had more inspectors, and you have verified that. We have been told today that the Health Disciplines Act could be changed, modified, amended, to ensure the quality. We have already been told those two things.

So now I am left with just one issue to discuss with you and that has to do with utilization, on page 4. You could not have frightened some members of the administration of this government more with those numbers.

Dr Sloan: They are absolutely true and double-checked.

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Mrs Cunningham: And that is what they are so frightened of. They are just not convinced that all those X-rays that you take are necessary and that is why, in fact, they have come up with this particular amendment. I would like you to take this opportunity to tell us how they can do it differently. If they are really worried about utilization and you do not like the amendment—and I do not blame you; I do not like it either, because of all the other things that go with it—what would you suggest to look at utilization? Are there things happening out there that this government and the people of Ontario are paying for that they should not be paying for? I am sure in your profession you could offer some suggestions.

Dr Sloan: The longer you stay in practice, there are two sides to the practice. There are doctors—and they are easy to take shots at—and there are the patients. Out there in the real world, there is a thing called patient demand. They shop for service and they get the service they want, and it does not matter whether it is a routine examination or a more sophisticated examination.

In my practice, as I have stated, there is no self-referral. What I get is on a requisition from a qualified physician, be he a general practitioner or a specialist.

The mechanisms, as we have stated, are already in place. The college of physicians and surgeons has a mandatory peer review program. I am not sure where they came from today. I think they agree with mandatory peer review. I think they have a lot of work to do if they are going to jump from 400 to 1,800.

But there are two sides to the story, and one of the problems that always bothered me is that everybody always looks to the doctor as the scapegoat. There is the patient out there, so it is a combination of problems perhaps.

There is a demand for service, and you know what? Office practice radiology—and as I stated

before, I do both—can provide that service easier, quicker and, most times, with better equipment. Why? Because the private enterpriser took a chance, at his or her risk.

Mrs Cunningham: Do you then go along with your own professional group, which suggested that a committee of the OMA, the radiologists, the government and other groups take a look at this whole issue of utilization concerns?

Dr Sloan: The biggest problem in this world today is communication, and if it is sitting down and communicating, I am all for it. What I do not want is just from the other side, swoosh—a bill and then an amendment that captures from 20 to 1,800 is inconceivable to me. There was no communication there. We welcome communication, we always have, and one of the biggest problems in the past has been there has only been communication on one side, and that has been the government. I would welcome any communication and any concerted effort by all parties to solve the problems. I do not think it has to be couched in an amendment to Bill 147.

The Acting Chair (Mr Grandmaitre): Thank you, Dr Sloan. I am sorry, I must try to adhere to a very strict deadline. Dr Raco.

DR DOMINIC RACO

Dr Raco: Thank you for hearing my views. I would like to thank my MPP, Mr Ferraro, whose doings got me here, or at least partly got me here.

I do cardiovascular medicine in Guelph. I am perhaps a little bit different from most of the people you have been hearing in that I am mainly a clinical doctor and I do only a little bit of diagnostic imaging myself.

I would like to perhaps go through my brief.

I am offering my views on this bill as an individual who is involved enough in diagnostic medicine that I know the benefits and problems associated with it. On the other hand, the great majority of my practice is in clinical medicine and I believe I can speak objectively on the topic. I extensively utilize both hospital and private diagnostic facilities. I work as a consultant for private diagnostic laboratory companies. I have started a hospital cardiac diagnostic lab as well as my own. Despite this involvement in diagnostic medicine, 90 per cent of my practice is clinical, which limits my conflict and prejudice when I discuss section 7 of Bill 147.

I have six main points that I would like to make.

1. We need private diagnostic imaging facilities in order to provide adequate care. Outpatient private laboratories are faster, more efficient and

more accommodating to the outpatient population than hospital labs. They ensure that the clinician can provide quick, effective ambulatory care for his patients. Without them, the number of hospitalizations would increase and the waiting time for simple standard tests would become very long.

2. Some control of the rapid proliferation of private diagnostic laboratories is required. This is perhaps a little controversial and some of my colleagues might not agree, but I realize there is a limit to health spending. The escalating cost in private diagnostic clinics will compromise other aspects of health care. For example, I do not think it is fair that the rapidly increasing numbers of diagnostic imaging laboratories in Toronto should jeopardize the new hospital development in Guelph. The numbers of laboratories should be controlled in a manner to allow uniform access of health care in Ontario.

3. I think that if the committee should address any aspect of these private clinics, it should be quality assurance. Quality assurance should be the main aspect of private diagnostic imaging laboratories that section 7 addresses. The present system does little to ensure high quality, but rather it financially rewards compromised quality. Again, I know that this might be controversial among my peers. There is almost no professional or technical control over these laboratories. I know you have all heard that there is, but in reality I do not think that there is a lot.

By using the lowest quality equipment and unqualified technicians, one can gain the greatest financially. For example, I have in my echo lab—I do cardiac ultrasounds. I have a piece of equipment that is worth \$180,000. I employ a full-time registered technician and I actually supervise the tests myself. I make no profit on the technical OHIP reimbursement. At times I intervene to the point that I, in effect, provide cardiac consultation to the referring physician without any consultation cost to OHIP.

On the other extreme, a physician with no cardiology training who has never even seen an echocardiogram can buy a \$10,000 piece of equipment and start billing the same technical and professional fee as myself. Through the college of physicians and surgeons, we must create professional standards in diagnostic imaging. A physician meeting such standards should be directly responsible for each diagnostic lab. Standards must also be set for technicians and equipment used.

4. Hospital diagnostic laboratories should be restricted to inpatients alone. I am a very strong

supporter of hospitals, and I generate a majority of my practice from hospital care. I should add that I am the chief of medicine of one of the hospitals in Guelph. Unfortunately, I cannot agree with the recent hospital movement to promote outpatient diagnostic work. Hospitals have been put under extreme pressure to increase their revenues. Unable to decrease their spending, most hospitals have hired consultants to help them generate other sources of revenue. One of the avenues hospitals can generate money is through outpatient diagnostic work. In an effort to do this, hospitals have forgotten that their main aim is to serve the inpatient population. Many hospitals have now placed quotas on outpatient diagnostic work by including revenues from this work in their budget. Hospital administrators put pressure on their radiology department managers to meet these budgets. In order to do this, they often put their outpatient diagnostic work in front of the inpatients. I once complained to an X-ray department manager that I could not get an X-ray done on a sick inpatient that day, as there were several outpatients waiting for tests. He commented that the outpatients are "paying customers" and they could not afford to do the inpatients.

Not only does this cause delays in doing inpatient work, but it also decreases the quality. In order to try to accommodate as many outpatients as possible, the hospitals will put unrealistic loads on their diagnostic facilities and compromise their quality. Private diagnostic laboratories often offer same-day service. In order for hospitals to do this, they compromise both the quality and quantity of the inpatient work. We are talking about two very different sets of patients.

For example, the other day there were three patients in the ultrasound waiting room at one of the Guelph hospitals. There was an elderly lady half exposed in a hospital gown who was nauseated and holding a kidney basin, there was a very sick man with cancer in a wheelchair who was obviously in pain and there was a pregnant woman who was trying to control her two young children so that they would not disturb the two inpatients. That outpatient waiting for her obstetrical ultrasound did not belong there. Although there is no question that this lady deserves to have an ultrasound, it is inappropriate for this well person to be competing with the sick individuals for the same diagnostic test.

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Hospitals should be funded in a manner that does not force them to try to generate income

from outpatient diagnostic work in order to meet their budgets. In the long run, we cannot afford to have these sophisticated institutions with high overhead for simple outpatient tests.

5. For some communities, standard diagnostic tests are only available through private diagnostic facilities. These cannot be jeopardized. For example, in Toronto, nuclear medicine is readily available in both hospital and private clinics. Wellington county does not have inpatient nuclear medicine. Since the two hospitals could not afford to start a state-of-the-art nuclear medicine service, a private facility was organized a year ago. This brought the same equipment as in the downtown Toronto teaching hospitals to Guelph. This enables us to do investigations that we were previously unable to do in our community. There was no way Guelph was going to get this sort of facility through the hospital system.

The technical fees provided by OHIP are not enough to run the lab, but it is being subsidized through the professional fees of the physician owners. In the nearby town of Fergus, ultrasound is only provided by a private diagnostic company. Although these private diagnostic labs may be seen as options in cities such as Toronto, they are often the only alternative in smaller centres. The government should ensure that these labs in smaller communities remain viable.

6. Regarding the grandfather clause, since the section dealing with private diagnostic labs was not proposed until August 1989, all labs in existence to this date should be allowed to remain viable but should be forced to meet quality assurance standards.

In summary, I have felt for some time there is a problem with our outpatient diagnostic facilities. We need to control their rapid proliferation and, more important, to control their professional and technical quality.

Unfortunately, what is being proposed in section 7 of Bill 147 will not do this. It may cause injury to private laboratory companies and some diagnostic physicians, but it will be the patient who will pay the highest price. It will make standard tests impossible to get in some areas and difficult to get in others. It will compromise the care of hospital patients, as they will have to compete with larger numbers of outpatients for the same tests. It will entice hospitals to prostitute their resources so they can generate funds on outpatient testing.

I plan to be part of our health care system for the remainder of my working life and I am becoming scared that we are on the road to destroying it. All the good points of Bill 147

are going to be overshadowed by the chaos created by section 7 of this bill. At the end, the entire bill is going to be remembered as a bad one because of the last minute changes made through section 7.

I agree that diagnostic clinics must be regulated in some way, but I urge you to maintain viable this very important aspect of our health care system. Its collapse may decrease profits in diagnostic laboratories, but they will survive. It will be on the patients in towns like Guelph that you will inflict the greatest injury.

Mrs Stoner: Dr Raco, you are the first person who has been here specifically with a cardiovascular perspective on this thing. Do you do a process called cardiac catheterization, I think it is called?

Dr Raco: No, we are not fortunate enough to have a cardiac cath lab in Guelph.

Mrs Stoner: So you do not have one in the hospital or outside of it?

Dr Raco: No. We would like one.

Mrs Stoner: I hear what you are saying. As you can tell, I am not terribly familiar with the term, but I have heard that it can potentially be a dangerous procedure and there is a potential for cardiac arrest.

Dr Raco: Yes.

Mrs Stoner: Would you recommend that that kind of procedure take place outside of a hospital?

Dr Raco: We know from the American experience that it can be done safely outside of hospital in a selected population. There are high-risk patients where it should not be done as an outpatient, but there are patients where it could be done as an outpatient. That would probably cut costs in the whole cardiovascular budget.

Mrs Stoner: What kind of assessment would you make as to who would be appropriate? How would you know, other than maybe age and weight?

Dr Raco: With people who have complicated valvular heart disease such as aortic valve stenosis, you would not want to do that as an outpatient, but a routine heart catheterization for angina is one that from the American experience we know can be done quite safely as an outpatient.

Ms Oddie Munro: On page 2 of your report you take a look at quality assurance as being the main aspect that section 7 should address. In speaking to focused groups of professionals

providing diagnostic services, in the case of radiology, for example, I am led to believe that those professionals would like to control any abuse or at least make sure that the system is as quality assured as possible.

I am wondering about the way you put it here. When a doctor refers a patient to the independent health facilities or centres, part of the problem I would see in the emerging possible abuse is that that patient wants to get a battery of tests. I guess one of the reasons for my earlier question about the relationship between a teaching hospital and the centres that largely provide routine tests is that that would surely be one of the indicators that any panel would have to investigate in order to assure that if someone simply bought a \$10,000 piece of equipment, he would be able to use it.

I understand your problem is that you do not want your own particular practice to be watered down, or indeed your business to be watered down, but do you not feel that the responsible people involved could in fact come up with a team approach that would sort out the problems you have obviously alluded to here? Do you have that much faith in the system?

Dr Raco: I think what is required is for different sections of the government, medical community and laypeople to get together, go over this and see what society actually wants from doctors.

We need some sort of regulation. I do not think that any one group by itself, the government, the college or the OMA, should try to make up this regulation. It should be a combined effort, and it should not involve only the people in the teaching centres, because they are often dealing with a very different set of people in places like Guelph or Kitchener or Oshawa or Sudbury, so it should involve physicians from the communities and from different aspects of medicine, both from clinical medicine and diagnostic medicine.

The Acting Chair: Thank you. Lady and gentlemen of the committee, we will go beyond the six o'clock schedule. Is this acceptable to you? We have two more presentations to listen to.

Will Mrs Farida Chislett make her presentation? You have 15 minutes, Mrs Chislett.

FARIDA CHISLETT

Mrs Chislett: Thank you for giving me this opportunity, all of you, and I will not take up too much of your time. Basically I agree with the amendments to Bill 147, so I will take a slightly different view from that of the preceding people.

In my presentation I shall be addressing the following concerns: utilization of X-ray and ultrasound services; quality assurance; availability in remote areas; and cost control through public awareness.

A mechanism to try to assure quality and appropriate utilization would be useful. There is already a quality assurance program from the Ministry of Health's X-ray inspection branch regarding safety of X-ray equipment and dosage of radiation to the patient. As far as I am aware, there is no quality control program for ultrasound equipment of any nature at present. There is also no mandatory peer review of X-ray personnel giving the X-ray or ultrasound examination to the patient. I apply this observation to the technical staff rather than the doctors.

1750

I believe that concerns regarding quality assurance in these facilities have also been expressed by the Ontario Hospital Association and the College of Physicians and Surgeons of Ontario. The amendment to include these facilities under Bill 147 addresses the need for quality control in the areas I have described.

At present there are limited means of monitoring the performance of medical facilities such as X-ray and ultrasound clinics and laboratories as well as facilities operated by certain individuals for specific procedures. This amendment provides the opportunity for quality control through regulations.

Continuing education and peer review mechanisms will ensure that all health care practitioners and operators maintain their expertise with changing technology. However, it is critical that adequate access to continuing education be given to staff of private facilities.

With regard to utilization of services, the fact that in Ontario there is no direct cost to the patient or practitioner is a contributing factor to the lack of control over the requests made for diagnostic tests. Therefore, I respectfully suggest that the appropriateness of diagnostic tests be continuously reviewed by the health care professionals. The key factor of referrals is not affected by whether a clinic is operated for profit or not.

As I understand, the question of proliferation of X-ray and ultrasound facilities was raised by the Ontario Hospital Association. The amendment put forward by this committee will ensure that in future all diagnostic facilities would be properly planned and with advice from the district health council as to the location, existing clinic density and needs of the community.

At present there are no guidelines or restrictions as to where a new radiology facility or any other diagnostic facility can open. There are situations where duplicate facilities are located within the same city block or even next door to each other, and I am sure none of them are making their ends meet.

It is not surprising that hospitals are concerned that new facilities in their vicinity have greatly affected the patient flow through their radiology departments. Hospitals claim to have to provide 24-hour service in their radiology departments, and because of underutilization, at present they are not very cost-effective. They have very expensive equipment sitting around which is underutilized.

It is my impression that the majority of the public view the hospital department as a place to go in an emergency. In my opinion, hospitals should provide practitioners and the public with better information as to the availability of services around the clock. The hospital X-ray departments should focus on providing the same level of accessibility and convenience as the private facilities if higher utilization is their goal.

This is exactly the kind of situation where local district health councils can determine the best balance between hospitals and private facilities in the community. The saturation and overutilization of diagnostic services in southern Ontario are not in balance with the availability of such services in parts of northern Ontario. Allowing for-profit ventures in the underserved areas will not address the inequity of services in different regions. Availability of capital cost funding for nonprofit ventures may encourage the service providers to move towards the underserved areas.

A small portion on cost control: An important factor in cost control is cost awareness. Today, health care consumers have little awareness of their health care costs on an individual basis. Increased user awareness will be beneficial in terms of the increased knowledge of value received for tax dollars spent. This may also increase self-control of utilization.

I respectfully suggest that a pilot study be carried out in Metropolitan Toronto and a few other urban areas. This study should undertake to provide selected individuals with a detailed breakdown of their utilization of OHIP-funded services and the associated costs.

Patient confidentiality will have to be maintained at all times during the study. One way is to issue the usage statements to the individual patients rather than the OHIP subscriber, so that

if parents are the subscribers in the case of a young teenager, confidentiality will still be maintained with regard to visits to the doctors' offices and whatever the reasons.

Frequency of notification need not exceed once every six months. This practice of notification will make patients aware of their consumption pattern of health services, besides providing them with a means of auditing the claims made on their behalf.

The study population should be monitored to determine their usage trend relative to the users outside the study. For example, does increased awareness of cost significantly affect usage? The opinions of the same population regarding various aspects of the provision of health care could also be solicited; for example, funding sources such as user fees, higher taxes, cost controls, levels of service, etc. This would be done to determine the impact of cost awareness upon user attitudes.

No further opinions will be put forward at this time in regard to this.

Mr Keyes: I apologize; I was not here for your introductory remarks. I was wondering if you mind just sharing with us your background in the particular field. It is rather interesting, we have no members of opposition parties here at the moment. The majority of the people who have come before us in the four days of hearings have been those who oppose the bill, with some support from some sectors. Would you mind sharing some of your background? Are you a radiologist or a clinician?

Mrs Chislett: I am a radiological technologist who takes the X-rays. I have been in the profession now for 21 years. I trained in Britain and worked there for about 12 years before coming to Canada. I was in the private sector in Canada, private facilities, as well as extensive hospital practice in Canada as well.

Over a period of years, I have noticed that there was a need for quality assurance for sure. The HARP act is there. It was long overdue and it has come in. The patient protection from the safety of radiation is definitively taken care of. It could be a bit more strictly monitored by frequent visits to the facilities. But regarding the quality assurance of the technicians themselves, you could have all the fantastic machinery and radiologists and everyone else, but right now, for the people who really are running the place, there is no mandatory peer review. It has been long overdue, but it has not yet materialised.

In spite of all that, if you have to repeat your examinations, there are additional costs as well

as dosage to the patient, so that is where I come in for quality assurance. The medical people can take care of the radiologists. There are very differing standards of radiology in different facilities as well, and quality assurance from the physicians' point of view should take care and there should be more standardized tests where close control and financial rewards should be balanced.

Mr Keyes: Would the facility in which you work be owned, or operated, by a physician or a nonphysician?

Mrs Chislett: There are facilities right now which have been allowed to open without a physician owning the facility, because there is a very simple application form. It does not even need an X-ray technician. All these years X-ray technicians were the last people to go into business for themselves, yet 80 per cent of the time they are the ones who are in the private facilities, because radiology hours spent in the facility are very limited, especially if they have a lot of locations to go to or they are in a hospital facility as well. But the cost of the treatment has been the frightening part.

Also, there have been real estate agents, all kinds of private organizations and groups of organizations that have gone ahead and set up and there is the proliferation regardless of the need in the community. The local district health councils would be more familiar with what are the needs: where are the new developments and whether there is adequate access.

Not only that, some of the facilities have the banner of X-ray and ultrasound, but they may not provide the routine facilities which are an accepted standard in most of the private facilities. Even within ultrasound, there are people who say they provide ultrasound facilities, but when you come down to a smaller portion, they do not have some equipment. There are a lot of variable standards within the private facilities which no one seems to have taken into consideration.

1800

The Acting Chair (Mr Grandmaitre): Two short questions, Ms Oddie Munro and Mr Adams.

Ms Oddie Munro: I would just like to focus, and I am glad to see your suggestion, on continuing education and the adequate access to continuing education for private facilities staff. Could you just give me some information as to how staff of private facilities currently obtain professional development or continuing educa-

tion? I think it is extremely important and you have not addressed this point.

Mrs Chislett: There is very little incentive in terms of any remuneration for recognizing your qualifications, because you are still going to carry on the same workload which you always have, regardless of additional information. It might benefit you personally, but if there were more recognition and credit given when it was due, it would encourage more people from private facilities to participate. You should not have to incur loss of time or income to go to school for six months so that you can upgrade so that there will be no shortage of technologists in certain areas.

This is where private facility people have suffered. The time you have is either through correspondence courses or through evening classes at certain institutions. Besides that, because there is no peer review. There is very little incentive for people to want to go and benefit. In the hospital, you are more or less thrown into a situation where you are learning from other people all time, so even if you do not attend, you will still be able to maintain certain standards.

Ms Oddie Munro: So the continuing education in the hospital setting is much more accessible within the rounds, or whatever form it might be.

Mrs Chislett: Definitely.

Ms Oddie Munro: And you are making a recommendation that professional development is essential in the private facilities, which I think is a good point.

Mrs Chislett: Yes, and that they should be given time for it. It should be recognized as part of the cost of operating or whatever.

The Acting Chair: One short question, Mr Adams, and hopefully a very short answer.

Mr Adams: Given the time, I will phrase it, if I might, in the form of a suggestion. With regard to your proposed pilot study on the impact of awareness of cost, if you know of any comparable studies that have been done anywhere else, normally, when you set up an experiment, you have some idea of the outcome. I think the committee would be grateful to receive any experience you have had with that kind of thing.

Mrs Chislett: I am talking personally from my experience of having worked in clinics, where you come across Canadians even living in Ontario today who do not have OHIP coverage. If they have a chest X-ray and they are suddenly told that it costs \$30, there is quite a reaction.

People are not aware, even at a very low level of service, as to what their dollars are paying for. If there are families which have had to fund them and they go through and they see at the end of the year that they have spent \$10,000 worth of taxpayers' dollars, and yet they may not consider themselves very ill, this is the awareness. There is a real life trauma with the cost.

In Britain, when the national health was introduced, a lot of patient awareness was brought up to the level that people realized why the facilities had benefited in some areas and not in others, because there was no patient awareness. People take it for granted: "I do not feel well today. I am not willing to wait for two days, because somebody ought to look after me right away."

I am taking about personal control of utilization. If they become aware that an ultrasound examination is costing \$80—"I have a small tummy ache. My own doctor is not really available. I am going to a certain clinic or an emergency department. They do not really know me. Should I wait for two days, talk to the person who knows me before an examination is administered, or should I still have it, go ahead with it?" Two days later I go to my doctor, who does not have the results, who will say, "Let's do another." This is where I feel there is no control.

The Acting Chair: Thank you, Mrs Chislett.

Right now, I would like to call upon Jimmy—Jim Carter, I am sorry. Jim Carter, X-ray technologist. Mr Carter, you have 15 minutes.

JIM CARTER

Mr Carter: I used to get Jimmy Carter all the time, but not so much lately. It is okay.

I am very honoured to be able to present my views regarding section 7 of Bill 147. I am an X-ray technologist with over 20 years' work experience in both hospital and clinic radiology departments. I have served as section chairman on the southwestern section of the Ontario Association of Medical Radiation Technologists for two years. I have taught radiographic technology and related subjects. Presently I am acting chief technologist at a private facility. I have no ownership interest in any clinic. My concern is for patient care.

Quality assurance has always been a part of my daily routine as a technologist, a teacher and an administrator. I wish to provide you with information regarding quality control in both hospitals and clinics.

By way of background, each of the 4,000 X-ray technologists in Ontario, including the

1,500 employed in private clinics, has received training in quality assurance and quality control as part of the skills required to attain his or her professional status. Upon graduation and certification, these new professionals move into the workplace with personal choice and job availability dictating where they will be employed at any given time. There is a high degree of mobility in both hospitals and private facilities, with many technologists employing their expertise in both settings. Quality assurance is a basic requirement of the technologist's function, which brings me back to the principal objective of this presentation.

I have read the revised version of Bill 147, including the amended section 7. I am convinced that it offers nothing in regard to any improvement in quality assurance. All that it will produce is increased bureaucracy, increased cost and unemployment.

Let me give you specifics. The basic elements of quality control may be outlined as follows: equipment specifications, which are already regulated under the federal Radiation Emitting Devices Act and the Ontario Healing Arts Radiation Protection Act; processing guidelines, which are already regulated under HARP; film analysis parameters, which are already regulated under HARP; personnel controls, which again are already regulated under HARP and by the College of Physicians and Surgeons of Ontario.

Will Bill 147 and its amendments provide any additional necessary controls? No. All it will do is add bureaucracy and duplication to already existing legislation. The HARP Act currently provides the same strict quality control guidelines for both hospital and clinic facilities. The scope of the HARP Act also provides for quality assurance regulation, evaluation and alteration, both current and future. The amended section 7 of Bill 147 will only complicate this system and add nothing but uncertainty and potential clinic closures.

I would like to add that section 7 of Bill 147 will cause clinics to close, not because of any quality assurance deficiency but because of the piling on of unnecessary bureaucracy will break the financial back of health care providers.

HARP currently provides a good quality control mechanism for X-ray facilities, equipment and personnel. Section 22 of HARP provides for licensing of facilities by the provincial cabinet, if it is needed, and it also allows for the extension of regulations to control or make changes affecting nuclear medicine,

ultrasound, computerized axial tomography and magnetic resonance imaging, if needed.

In section 20 of HARP, the provision is made for the provincial cabinet to appoint members from the College of Physicians and Surgeons of Ontario to act as inspectors, co-ordinated with technical inspectors, to review equipment, personnel and all quality control aspects. This would contribute far more to quality assurance than the approach taken in section 7 of Bill 147. The college already provides for medical review committee assessment, random assessment, compulsory peer review and complaint review, all mechanisms for quality control. Section 24 of Bill 147 will only duplicate this function.

1810

In the absence of section 7 of Bill 147, the cabinet can already make any regulations deemed necessary or create any programs needed to evaluate the performance of procedures and the observance of standards; section 22 of HARP has made provisions for this. Under the HARP Act, there is already an existing committee of health care workers, educators and lay people whose function it is to work with government, to develop and implement new quality control functions. Why is this agency, which the government has created, being ignored?

If you feel existing hospital and mostly private facilities still need further policing to ensure the adherence of the quality assurance guidelines outlined in HARP, I would suggest that a working committee be constituted, including the officials from the ministry and representatives of the existing HARP committee, whose job it is to review quality control. This would be far more constructive than the proposed amendment to Bill 147, which was obviously drafted without the input of those who work in this area on a day-to-day basis.

I would like to conclude by asking you some questions and then letting you ask me any you wish. My questions are these:

Will the reduction in the availability of community-based services to the disabled, to the elderly and to the rural dwellers add to quality assurance and quality control? Will the unemployment of thousands of health professionals add to quality assurance and quality control? Will this enormous added workload on already overburdened hospital departments add to quality assurance and quality control? Will the serious underfunding and resultant delay in equipment upgrading or replacement add again to quality assurance and quality control?

How will you approach women's rights when there is a dramatic decrease in access to preventive medicine such as breast X-rays, pelvic and breast ultrasound examinations?

How will you be able to justify section 7 of Bill 147 when the anticipated waiting lists and hospital department lineups become increasingly longer? How will you respond to patients with terminal diseases, not diagnosed until too late because of decreased access to health care? How could you possibly recommend that section 7 of Bill 147, with its added bureaucracy, duplication and yet even fragmentation of existing legislation be beneficial to quality health care in Ontario?

Bill 147, prior to the amendment of section 7, would have helped the people of Ontario. The present form of legislation will hurt many, many more of those in need of health care than the rest of the bill combined will help.

The Acting Chair: Thank you, Mr Carter.

Mr Adams: I enjoyed your presentation and I appreciate your developing it. You mentioned the college and these various other things that they could do.

Mr Carter: Yes, I noticed that they support it.

Mr Adams: They were here earlier, yes, supporting it. A part of their support was in fact a justification of the quality assessment program. What is your reaction to that? Essentially, they argued that it was important that—

Mr Carter: Yes, but a lot of facilities, private facilities especially, which seem to be a primary concern here, have ongoing assessment programs of their own. Now, they do not have a lot of the accreditation and, seemingly, bureaucracy that goes along with it, but the control is very good, actually, within a lot of the private facilities. I am not really aware of any gross negligence on anyone's part in the private sector in that respect. I cannot really comment on the position of the College of Physicians and Surgeons of Ontario there, but that is my feeling.

Mr Adams: Yes, they really were quite strong, and as you have not seen, it is unfair that there be a systematic review.

Mr Carter: By the way, I find no fault with having any kind of reviews. That is just fine if they feel it is necessary to do so.

Mr Adams: Okay. With regard to your seven or eight questions, it is not for me to respond to them, but I would point out to you that for each of them, with the possible exception of one, and you can perhaps work out which one it is, you set up hypothetical scenarios which I or the rest of the committee cannot disagree with. When you

do that and then pose the question, you inevitably create a situation in which someone such as myself cannot respond to your seven questions with a yes or no answer. In each case, when I read them and then when I listened carefully to what you said, you set up a scenario which I just did not see arising from the legislation that we have before us.

The Acting Chair: Mr Adams, I will see that the minister or the ministry gets Mr Carter's questions.

Mr Adams: By all means. Thank you.

The Acting Chair: Mr Keyes.

Mr Keyes: I guess it was really not so much a question as just a comment. I do not think that I could begin to answer for the ministry, either, all of the questions, but one thing that you did raise is the hope that this bill does provide some scope to provide additional service, particularly to the underserved areas of this province. That can be done, potentially, as need is determined in those areas. The bill also allows for the potential of capital funding for those areas. I think the significance of the whole intent of this bill should be, if nothing else, to provide better or needed services to the parts of the province that are currently without them.

You talk about the overload in hospitals, and yet we have hospitals before us whose greatest concern is the competition for public dollars that was created by the private clinics. You could probably cite, as could I, some hospitals where there are lineups perhaps to get in and we might both provide those where they do not exist with lineups, but certainly we had a presentation made that that was a considerable concern to them in certain areas of the province.

Mr Carter: May I make a comment there? In gathering a lot of information for this I talked to members of our own society. Mrs Gallagher here gave a presentation last week, I understand. I talked to several board members, and all of them are holding chief technologist positions in hospitals. Without exception, there is not one of those people who said the hospital could take just a minuscule added load.

They felt they were at capacity now and if the clinics, in any large fashion, closed down, they could not handle the volumes that would be necessary to work with the equipment they have. They said that the way their hospital departments were geographically laid out within the hospital, expansion processes would be very difficult and very time-consuming. I have real fears here that

this legislation, with the economic restrictions, will cause a lot of clinics to close.

Mr Keyes: Again, different hospitals view it differently, and we had presentations by some with a different view from that. I think the whole point is that there has to be a system of review of determining need and that is where district health councils come into play, to see whether it can be met with existing facilities or whether more should be there.

I am not convinced there is going to be this wholesale closing down of clinics that we have heard reiterated in the four days of hearings that we have had, because the part that is not there is the negotiated aspect of replacement of the T fee, as currently shown. I think when that is worked with, both sides sitting down to decide how it is best replaced, to take into account the fact that

there are those costs, perhaps 99 per cent of all these clinics will see that they are fulfilling the function the ministry recognizes they are, and they will be able to continue to work. I think some of the concerns you have expressed are simply the type of issues that we, as a government, will have to direct as we implement Bill 147 in whatever form it takes as it passes third reading in the House, hopefully this fall.

The Acting Chair: Thank you, Mr Keyes, and ladies and gentlemen, for helping us make our day more useful. I want to thank every group and individual who made a presentation to the committee. I am sure that your position for or against will be very helpful.

The committee adjourned at 1820.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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From the Ministry of Health:

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Caplan, Hon Elinor, Minister of Health (Oriole L)

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From the College of Physicians and Surgeons of Ontario:

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Dixon, Dr Michael, Registrar

From the Agincourt X-Ray and Ultrasound Clinic:

Bablad, Dr G. S., Owner

From the Hamilton Academy of Medicine:

Thomson, Dr Graham, Director, Department of Radiology

Individual Presentations:

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Raco, Dr Dominic

Chislett, Farida

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Ontario

No. S-6

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Education Statute Law Amendment Act, 1989

Ottawa-Carleton French-Language School Board Amendment
Act, 1989

Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue
française d'Ottawa-Carleton

Second Session, 34th Parliament

Monday 20 November 1989



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 20 November 1989

The committee met at 1533 in room 151.

EDUCATION STATUTE LAW AMENDMENT ACT, 1989 (continued)

OTTAWA-CARLETON FRENCH- LANGUAGE SCHOOL BOARD AMENDMENT ACT, 1989 (continued)

LOI DE 1989 MODIFIANT LA LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON (suite)

Consideration of Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment, and Bill 65, An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988.

Étude du projet de loi 65, Loi portant modification de la Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

The Chair: I would like to begin the hearings. I would ask the committee members to stay very briefly after our final presentation this afternoon. I would like to discuss an item with them.

We are going to begin by having a briefing from the Ministry of Education on this rather complex piece of legislation that we have before us. So I would invite the members of the ministry staff to come forward, please. Is it you, Mr Bowers, who will be presenting?

Mr Bowers: Mr Lenglet.

Mr Lenglet: Ably assisted by Mr Bowers and Mr Riley.

The Chair: I know that. Will you be presenting anything to us in hard copy after this presentation?

Mr Lenglet: I have provided copies of pieces of material which I understand will be distributed at this time.

The Chair: I guess I have not looked at it. We are going to have it handed out now.

Mr Keyes: Madam Chair, just before we begin, are we not waiting for either one of the opposition parties today?

The Chair: They have told us to go ahead. This is a briefing from the ministry and we are not

going to be able to keep our schedule unless we begin immediately.

MINISTRY OF EDUCATION

Mr Lenglet: Let me introduce first the issues related to Bill 64, the pooling bill, which includes the boundary change legislation. I am going to ask Alan Bowers to just briefly outline the import and significance of the boundaries part of that legislation and then I will address the questions related to pooling.

Mr Bowers: The boundaries part of the legislation has as its major policy intent that, being a Roman Catholic in Ontario, you should have a reasonably equal opportunity to choose between supporting a public board or supporting a separate school board. Because of the historical development of separate school boards through the mechanism of three-mile zones established under the Scott Act and continued with the sanction of the Constitution Act of 1867, the separate school boards have developed with no respect for municipal boundaries and in a manner where the school board jurisdictions are not congruent with the areas of public boards.

There are overlaps of the boundaries of counties and regional municipalities. Within counties and regional municipalities there are some holes where there are no zones. In general, the attempt within the boundary legislation is to ensure that separate school boards and public school boards have congruent areas of jurisdiction. I am speaking here particularly of the large school boards. The small rural separate school boards and the small district school area boards are not affected by these proposals in the legislation.

Other areas that are not affected are public board areas where there is essentially no strong separate school presence at all, particularly Manitoulin Island, where there is simply one municipality, in Little Current; the county of Haliburton, where there is a small combined separate school zone, Cardiff-Bicroft; and central Algoma, which is overlapped by some townships from Sault Ste Marie. It is not intended to extend separate school jurisdiction into these areas as a government dictate but to leave that to the populist expansion of separate

school boards, which is continued in the legislation.

The other thing that the legislation does is ensure that the separate school boards continue their development in northern Ontario into areas where currently there is no separate school jurisdiction, that there is some respect for municipal boundaries. So the three-mile zones are scrapped and expansion will take place on the basis of a city, town, village or township, including a geographic township, being the unit by which a separate school board may expand. Even outside areas which are surveyed, in the geographic townships, it is possible for separate school zones to be established by use of the 9.6-kilometre square. The 9.6-kilometre square was chosen because it is the minimum area for enclosing a three-mile circle in metric terms and still preserving, we hope, the constitutional rights of Roman Catholics.

The timing of this legislation with the pooling is that clearly it facilitates the mechanics of implementing the pooling legislation.

The Chair: I wonder if there are any questions on that particular part of the presentation.

Mr Allen: I am not sure I understood how squaring a certain circle preserved the rights of the Roman Catholic population. Maybe you would go over that again. How does that do that?

Mr Bowers: A three-mile circle converts into a circle with a 9.6-kilometre diameter.

Mr Allen: Yes, fair enough.

Mr Bowers: So that if you take the square it will completely enclose the circle that was the original, and because we have not increased the numbers requirement to the extent that Catholic school boards can continue to grow as a populist activity, the 9.6-kilometre square does not make it more restrictive and in fact makes it a tad easier to create a separate school zone in unsurveyed territory.

Mr Grandmaitre: Back home in a three-mile circle, Richard, you can build an embassy as well.

The Chair: Are there any further questions of Mr Bowers? Mr Lenglet, perhaps you would like to continue.

1540

Mr Lenglet: The balance of the bill is concerned with the subject matter which we referred to originally as a fairer sharing of the local tax base, which is more and more commonly called pooling. Essentially the changes contemplated in this part of the bill are directed towards addressing certain areas in which the

designation rules that had traditionally been used to allow ratepayers to support the separate system are directed towards correcting particular cases where those designation rules did not work at all fairly.

In particular, the bill defines a category called publicly traded corporations. If one looks at the designation rules as they had previously related to corporations, it had always been recognized that a corporation was able to designate to the separate school system to the extent that it had shareholders who were Roman Catholics. It is generally understood that in the case of small, private corporations these provisions worked reasonably well, but in the case of public corporations, corporations whose shares are traded on the stock exchange where those shares change hands every day, where those shares are held in street form often or held by other institutions, the capacity or the ability to determine the number of shareholders who are Roman Catholics is very limited. Consequently, very little of this assessment was ever available to the separate school boards.

The bill, in contemplating that particular problem, defines out a new category of corporate assessment called "public corporations," loosely defined as those corporations whose shares are traded on a stock exchange anywhere in the world, and establishes that the assessment of those corporations, rather than be subject to the designation rules that have existed previously, will now be pooled and the assessment of those corporations will be split between the public and the separate board on the basis of the residential assessment supporting each board in the municipality. So rather than these corporations making a designation in the traditional way, there will be a formula split of that assessment. It is believed that will provide for a fairer sharing of the assessment between the public and separate boards in the municipality.

The second area of concern in the bill relates to business partnerships. Traditionally, partnerships have only been able to designate assessment to the separate school system if all the partners were Roman Catholics and wished to support the separate school system. Under any other condition, the assessment would automatically default to the public school system. I suppose, taken in its extreme example, if one could envisage a circumstance where there were nine partners who were Roman Catholics and separate school supporters, they would be able to support the separate school system with the assessment of that particular partnership, but if

they added a 10th partner who was not a Roman Catholic or who was a Roman Catholic who did not wish to support the separate school system, then all the assessment would default to the public system.

So the bill contemplates, in this particular example, allowing the partnership to designate its assessment to the separate school system in the same proportion as Roman Catholics have an interest in the partnership. This in fact makes the provisions for partnerships very similar to those which previously existed for all corporations and which continue to exist for other than public corporations.

Both of those recommendations, the issue of corporations and the issue of partnerships, were addressed in Macdonald and noted as problem areas. Essentially this bill goes towards trying to address the problem that exists within those areas of designation.

The third area of concern in the bill relates to telephone and telegraph receipts. Telephone and telegraph receipts are sums of money paid by telephone and telegraph companies to municipalities in lieu of paying property taxes on their telephone lines and telephone poles. It is a rather substantial amount of money which for education purposes netted about \$85 million in 1987 for school boards. Because of the nature of the particular provisions of the legislation, that money was shared with the public school boards, but none of it was provided to the separate school boards. So the bill addresses that question, takes that sum of money and divides it between the public and the separate boards on the basis of the amount of residential assessment supporting each board in the municipality.

Again, what one has here is a new formula for the distribution of money that was already paid for education purposes in this case, but simply a fairer distribution of it between the public and the separate boards.

As a result of those changes, I think it can be readily understood that there will be a loss of assessment for the public boards; that as a result of that loss of assessment, there will be a loss of tax revenue for the public boards. To counter that, the grant funding mechanism in the province, the general legislative grants, are assessment-sensitive and in fact will replace a portion of that money lost. In other words, as you gain assessment you lose grant and as you lose assessment you gain grant, but that is not dollar for dollar. So in fact the grant mechanism replaces some of these funds but not all of the

funds that are lost by the public board or gained by the separate board.

Even after that mechanism had kicked in, that left the public board still in a position of net loss. As a result of that, there was the announcement by the honourable Chris Ward, the Minister of Education at that time, that the government would increase the operating grants paid to school boards to ensure that the public system as a whole across the province would not suffer a net loss of revenue, and an estimated figure of \$180 million was attached to that by the Treasurer (Mr R. F. Nixon). We do not know the exact amount of that because at this time, and until the assessment rolls are produced, we do not know how much assessment is going to transfer. Assessment records have never been kept that identified publicly traded corporations, nor have those assessment records ever identified business partnerships. So we are at this time awaiting the return of the assessment rolls to determine the exact amount of assessment that is shifting and consequently the exact amounts of money involved in the guarantee.

1550

I should note, however, for the committee's information, that the Ministry of Revenue has announced a delay in the return of the assessment rolls. They were originally to be returned on 19 December, which would have meant that assessment notices would have been mailed on 20 November, which happens to be today. Those rolls have been delayed, so they will be returned on 26 January. Notices of assessment will be mailed on 2 January. This will ensure that the Ministry of Revenue will be able to reflect the result of these committee deliberations in the information that is mailed to ratepayers at the time of the mailing of the assessment notices on 2 January. This information has been conveyed to municipalities. They have also been told that the interim tax tapes that they use for billing purposes, which are made available on 10 January or 11 January or thereabouts, will be made available at the usual time so that business can go on as usual.

I think that outlines the main features of this particular legislation and the action that goes with it. I might add that it is our full intention to identify in the 1990 GLGs the sums of money to be added into the operating grants and grant ceilings, so that everyone will be able to see exactly the sums that have been added, and to provide the backup information to show that the funds are doing what we set out to do.

Mr Jackson: What happens in the fifth year?

Mr Lenglet: In terms of the phase-in and what happens to the amount of assessment being transferred? Let me go to the first year first and then we will get to the fifth year.

Mr Jackson: Okay. We only have a half-hour though.

Mr Lenglet: I think we can make that reasonably quick.

In the first year, one sixth of the assessment that is going to be transferred—and let's talk about publicly traded corporations—is going to be transferred in the first year. In fact, what we are in the process of doing is determining how much assessment in each municipality—or at least what the ratio of that is. So if one calculated in municipality X that—if the changes were not made to the designation rule, 99 per cent of the assessment of public corporations would have been public and one per cent would have been separate. If the indications from the Ministry of Revenue were, as a result of identifying these corporations and applying the residential ratio to them, that the net result at the end would have been an 81 to 19 split—in other words, we move from 99-1 to 81-19. In the first year we will go one sixth of that way, so the amount to be applied to each public corporation would be the ratio of 96 to four. In subsequent years, we would continue to monitor that final position, which should change but not substantially, and move one fifth of the way of the balance in the second year, one fourth of the way in the third year, one third, one half, and then the balance, making up six reasonably equal amounts.

Mr Jackson: Could I frame my question another way? Let's just pretend funding is marbles. We have two groups playing marbles—public education. There are just so many marbles that they are playing with. As I understand the way this pooling legislation works, we are saying that one system has more marbles than the other system, so we are going to move marbles from one player to the other player. The province in the meantime says: "We promise you this is going to be revenue neutral. We are going to protect you," and it is going to put some more marbles into the configuration. Are they putting in marbles for five years, 10 years, 20 years, or are they just putting in marbles for five years?

Mr Lenglet: The money that is being added over those six years is a new sum of \$30 million, estimated at this time, based on the \$180-million overall impact. That money, added in the first year, goes into the general legislative grant base.

When we get our increase for inflation and such in the second year, that money will be part of the base that is increased. In addition, a new \$30 million, or an appropriate sum, will be added in the second year. That will occur over each of the six years. At the end of that period, the net base, the GLG base, will be larger than it would have been by the sum of \$180 million, including the inflationary adjustments, as the amount gets built into the base and inflated up. That would be the series of increases that would occur to that. It does not disappear at that time; it is in the base and remains in the base.

Mr Jackson: What would be your opinion of any reduction in the GLG base that might occur in tandem with this topping up, the increments, each year for five years?

Mr Lenglet: Do you mean an absolute reduction?

Mr Jackson: Say, if we go from 6.4 per cent down to six per cent, down to 5.8 per cent, down to five per cent, down to 4.8 per cent. How would you interpret—

Mr Lenglet: The GLG, or the elements that make the GLG have always had the capacity of being defined. In other words, there is a percentage for inflation and a percentage to account for this. There may not be a percentage to account for something else.

I understand that each year the government has to make a decision about the appropriate allocation of money, not only to education but to each of the other areas. What the allocation this year and each of the next six years will show is an identified \$30 million that you and I and everyone else can identify. Having identified that, one can also look at the balance of the allocation and discuss, as we might, whether it should have been more or not. But by making it a defined amount, there is no question as to what the balance is, whatever the size of that increase is.

Mr Jackson: In the interest of time, I will move on.

Mr Allen: You made the observation that the overall effect over that period of time would be that there would no net loss in the funding of the public school system in Ontario. Whether or not that is entirely agreed upon, it does appear evident, none the less, that that is not true of individual school boards and that at the end of the day there appear to be about a dozen or 13 that have come out on the short side. I guess their loss is somebody else's gain, if everything else is net,

neither gain nor loss across the system as a whole.

Can you explain why that happened, whether that is necessary and why it was not possible to devise a way of allocating through the funding system an arrangement whereby no board was in fact a net loser?

Mr Lenglet: I can try to explain that. Let me say first that you are correct in that when one makes the statement that the public system as a whole will not receive a net loss of revenue, that is not true of each and every individual board. In fact, our estimates in May indicated that 58 of the public boards would be better off and 13 would be worse off. If you have to give the 13 that are worse off a defining characteristic, it is that they are assessment-rich in commercial assessment. So public board, in losing the assessment, has lost a substantial amount. They have a lot to share and they have to share it. That is the defining characteristic of those 13 boards. We not only increased the operating grants, we increased the grant ceilings.

When you increase grant ceilings, what you do, in fact, is to provide a greater benefit to assessment-poor boards than you do to assessment-rich boards. In fact, we had a group of boards that had lost a little extra assessment on the one hand, and the mechanism of increasing the grant ceilings was one that in fact put a lot of the money back in exactly the opposite boards. The rationale for that is to maintain the basic equity of the grant plan itself.

In other words, if you provided particular money to those 13 boards, which happen to include in them about five or six of the richest boards in the province, you would be taking a major step towards equity and then, by the way, saying about those very rich boards that lost a little that now you are going to give them some money back. If that were the centrepiece of your operation, I suggest that the money would not be going in the right direction.

It was, however, recognized that those boards would suffer a loss and that there was a second part to the guarantee, which was that no public board would suffer a net loss of revenue. Although I cannot at this point define the form of that second part of the guarantee, I think what you can expect to see on top of the increase to the grant ceilings in 1990 will be a list of individual boards that have suffered a loss and a series of special payments to those boards, but that would be different from the introduction of the money into the equity funding model itself.

The Chair: Further questions? Mr Riley, do you have an independent presentation?

Mr Riley: No, I do not. I am available to answer any questions the committee might have on the legislation itself. I think Brian has pretty much summarized and covered the issues generally.

The Chair: This is a first. We are now one half-hour ahead of schedule.

Mr Keyes: I do not know whether Brian might want to hang me for what I am suggesting, but we handed out two documents today, one with questions and answers that people might want to take a moment to look at, but I think the other one that is probably more significant is in Mr Allen's question, and that is the impact study on coterminous sharing. I think if we take a little time to explain the tables there, it will allow you to look at every board in the province, your own in particular. I think it is a good educational exercise on behalf of this committee if we look at that.

The Chair: Let's take five minutes to do that.

Mr Keyes: That document is the best example of trying to show you exactly what will happen. If you agree to that, we will do so.

I may add that since the tables go in a rather reverse order, starting with table 2 and then going to table 1 and table 3, maybe I will find it still a little confusing, at least in my copy.

Mr Lenglet: I think we got it right this time.

Mr Keyes: We will try it and see.

The committee recessed at 1600.

1605

The Chair: Okay, folks. People have had a chance to read over the explanations that were presented by the ministry officials. Where would you like to begin? Mr Elliot, would you like to begin? Oh, I am sorry, Mr Keyes. I did not know to whom Mr Grandmaitre was pointing.

Mr Keyes: I did not ask any questions, Madam Chair. I think I have had the opportunity to go through it, but I found it an educational exercise. I just thought that perhaps Brian would take us through one typical board so that the people will understand it, because there is an accounting term that is foreign to me that talks about all the bracketed figures having negative values, which turns out to be a positive benefit to the householder. But when it is expressed as a negative value, some people like myself may read it differently. Probably we can let Mr Lenglet choose a page. Why do we not return to page 1 of table 1, that is the best way, towards the

back of the article, which shows the fully phased in revenue impact, including the \$165 million additional GLGs and just then arbitrarily take Brant county because it has both a public and a separate board.

The Chair: My copy says table 2. Is it the same?

Mr Keyes: There are three sets of tables there, and maybe go further through them.

Mr Grandmaitre: Flip it over.

The Chair: Flip it over? Does that help me? It still says table 2 on my page.

Mr Keyes: You are too close to the back. Let me find it for you, if I may.

The Chair: I thought I was right at the front.

Mr Keyes: We need a new collator or interpreter of these. These machines never do the work quite the way you think they do.

The Chair: I am not sure I have table 1 in my package.

Mr Keyes: I will keep looking and I will find it here, I am sure. Here it is. It is towards the end or the back, table 1, page 1.

The Chair: Yes, "Fully Phased In Revenue Impact (Including \$165 Million Additional GLG)" is the title of the page that I have had directed to my attention. I presume we all should be at that page. It is a few pages from the back. Are we all ready to go on now then? You are asking Mr Lenglet to take us through the Brant—

Mr Keyes: The Brant public and separate.

Mr Lenglet: I should have drawn some attention to these first. This in the material that was handed out to school boards on 18 May, so it is based on our estimated data, which is based on 1988 school board expenditure and the 1987 assessment rolls for 1988 taxation, which is the information that we had available at that time.

In the case of Brant county, in the first column, a sum in brackets of \$1,737,621 indicates that, based on our estimate of the amount of assessment that might shift under the proposed changes to the designation rules, Brant county would suffer a loss of tax revenues in the amount in excess of \$1.7 million.

The second column indicates that as a result of that loss of tax revenue, the board would experience an increase in its general legislative grants of \$1,163,000; in other words, an increase because of the loss but not a dollar-for-dollar matching of the funds lost. This is the full impact, not the phase-in in any particular year, leaving them in the position, if this were implemented in that year, of a loss of revenue of

\$574,000, the amount by which their increase in grants did not match the loss in tax revenues.

The next three columns deal with the impact of the increase of \$165 million in the operating grants paid to school boards with a corresponding increase in the grant ceilings. The Brant County Board of Education would receive \$1,570,000 from that \$165 million, and subtracting the amount that it had lost previously would leave it in the position of an overall revenue increase of \$996,000, which would be experienced by the ratepayers supporting that board as a decrease in taxes on an average household of \$17. That is a negative number which would be experienced as a positive if, in fact, the board in no way altered its spending behaviour because of these changes. Just the effect of these particular numbers would be about a \$17 decrease in the taxes on the average residence within the county.

The Chair: I understand that Mr Keyes would like you to go through the separate school board that is coterminous.

Mr Jackson: I have a supplementary on that. The supplementary was on the \$17 less cash needs. Just refresh my memory; does other legislation not speak to the fact that school boards are not obligated to pass that on to the home owner?

Mr Lenglet: No, this is a total budget decision of the board.

Mr Jackson: I realize that.

1610

Mr Lenglet: If it made the same spending decisions but was in this new world of having shared the assessment but having the grant ceilings raised by \$165 million, the net impact of that would be a \$17 reduction. They may or may not reflect it.

Regarding the separate school board, its experience of the change would be an increase in tax revenue of \$1.358 million. In gaining that assessment it would experience a loss in operating grants of \$1.076 million, for a net revenue impact of a gain of \$282,000. That is its position if there was nothing done in terms of increasing the operating grants paid to school boards.

When the operating grants and ceilings are increased, they are increased for the benefit of all boards. As a net result, the Brant County Roman Catholic Separate School Board would receive \$306,000 of that \$165 million, leaving it in a position of a net overall revenue impact of a positive of \$589,550. In other words, it would benefit by having that amount of additional money. If that money were reflected in no

increased expenditure but merely as a decrease in its mill rate, it would reflect itself as a \$60 decrease per household for ratepayers supporting the Brant county RCSS board.

The Chair: It was upon figures such as are in these tables that the \$30 million per annum was arrived at, correct?

Mr Lenglet: That is correct.

The Chair: Are there any further questions? That was a very good question. I am sure we all learned something.

Mr Keyes: I think it helps a great deal to answer not only a lot of the questions that have been in our minds around this table but those that have been asked of us by our boards, etc. The other one, to Dr Allen, is that it also shows very clearly those 12 or 13 boards that do have a problem. You will see them, as they are bracketed figures as well.

Mr Jackson: If I could revisit the statement about the guarantee that the Minister of Education (Mr Conway) has reiterated and Mr Ward initially enunciated, were there any discussions with legal counsel with respect to the wording of how that might be put in legislation?

Mr Lenglet: Not to the best of my knowledge.

Mr Grandmaitre: I am a little confused about the impact after the \$165 million added to the GLGs—

Mr Keyes: That is the interest that is due.

Mr Grandmaitre: Thank you, Ken.

Mr Keyes: Does that answer your question?

Mr Grandmaitre: It is a good thing we have a great chairman.

The Chair: Do you have a question?

Mr Grandmaitre: He just answered it, this time.

The Chair: Do you have any questions from the question and answer sheets?

Mr Lenglet: I might point out about the question and answer sheet that we circulated the questions and answers on or just after 18 May also. This is an update of those questions and answers, including certain more recent information or certain clarifications of information that on the original questions and answers people felt certain matters were not described as clearly as they might be, but this is basically the same document.

The Chair: None of the estimates has been changed at the moment, however.

Mr Lenglet: There have been no updates of the information.

The Chair: Did anyone want to speak about that which we will be dealing with in a rather different way, which is the separate part of Bill 65 having to do with the French-language school board? I thought maybe that is where your question was coming from, Mr Grandmaitre.

Mr Grandmaitre: Can I go back to the assessment again? If I understood you well, it is only the residential assessment that will be split. Am I right?

Mr Lenglet: The corporate assessment will be split on the basis of the amount of residential assessment supporting each board. If I could just clarify that in relation to Bill 65, Bill 65 directs itself to that issue as it relates to the French-language school board in Ottawa-Carleton since there is special legislation relating to that particular situation, but it carries the same principle forward, simply providing for a four-way split rather than the two-way split which would exist in other jurisdictions.

Mr Jackson: You sense I am interested in another question. I am interested in how current your discussions have been with the school boards with respect to what are the most recent sets of discussions you have had with school boards regarding this legislation.

Mr Lenglet: We met with representatives of the Completion Office Separate Schools and representatives of the Ontario Public School Boards' Association, most particularly with their counsel, to review the legislation and to determine what comment they had to make on that. At this time, I understand that they will be making those same representations to the committee.

Mr Jackson: To your knowledge, are any amendments being currently considered?

Mr Lenglet: At this moment, I am not aware of amendments that are under consideration. There are certainly things that have been suggested to us that have to be thought through, but there is nothing that I know of that is being contemplated as an amendment.

Mr Riley: Yes, I agree. I think the issues have been raised that we are giving some consideration to, but it is by no means certain that they will take the form of amendments.

Mr Jackson: Without suggesting that your sharing those with us would indicate the government is in fact making amendments, could you share with us what those areas are in the legislation?

Mr Riley: Some are of the technical and minor variety, really housekeeping or sprucing up the legislation a little bit. Others that have been

suggested are more significant certainly, bearing on the manner in which public corporations are defined, questions relating to the nature of ownership to which one has references for the purpose of determining the upper limits, whether it need be a direct ownership in a corporation that is counted or whether it is a possibility of an indirect form of ownership through intermediary corporations being used as part of the definition. As we have it, we have spoken in terms of the shareholders being Roman Catholic. What if the shareholder is a corporation whose sole shareholder is a Roman Catholic? What then?

I do not want to really go into other points because I am really now speaking to the representations that have been made to us and they would probably be best put by those representatives who will be appearing before you.

Mr Jackson: We have afforded you an hour, and some groups are only getting 20 minutes. You are certainly not going to get any argument from me if you share with the committee some of those points.

The Chair: Perhaps you would rather keep it to questions that you had during your briefings. Is that what you are suggesting?

Mr Riley: Yes. I am concerned about going on in detail about them for fear of prejudicing or not putting them in the light that the parties themselves would like to put them in, that is all. Second, we have not adopted them as our amendments yet and thus I am hesitant to really speak of them as though they were. They are under consideration only, but we have not taken a position on any of them.

The Chair: Please do what you are comfortable doing and no more.

Mr Riley: Beyond giving you some idea that there are some being considered, some of the significant variety all right, those are typical of the types of issues that you will be hearing about in more depth. I do not think I really should get into it any more than that.

Mr Jackson: Without asking you to speak on the mindset of the deputants, I will ask you then to speak on the mindset of the government you represent with respect to the reasons there is no specific language in the bill for guarantees to ensure that revenues are not lost. What was the rationale advanced to those groups that brought forward that question?

1620

Mr Riley: I am not sure if I should—perhaps Brian. I did not have instructions to really take

that into consideration, so it never really formed too much of my work.

Mr Lenglet: My response to that at that meeting was that I did not think a revenue guarantee in the bill was particularly appropriate. What they had was the word of the Treasurer and the word of the Minister of Education giving a guarantee as to the attention of this government in relation to this change in policy.

Mr Jackson: Given that we have two different figures from the two individuals you have quoted, I think it is more than appropriate to pursue, not vociferously but calmly, what was specifically stated as the reasons why that guarantee could not be provided to us, other than just your opinion.

Mr Lenglet: I think what you have is an estimate, and as I explained, an estimate based on data that did not exist or attempt to come to grips with that data. I think it reveals very well the way we intend to take the data that will be available to us in January and analyse it to formulate the amount of the guarantee. Whether it would be appropriate to put a guarantee in words and into legislation, I do not know. All I know is that the instructions I have are to make that work, determine that amount of money.

At no time in my participation in developing the policy on this was it a thought that had occurred to me that we would place a revenue guarantee in legislation, nor, might I add, was it a matter which, as I got my understanding and instructions as to what was agreed to—not agreed to but, what was discussed by the party—that was not an element. The element was to make the guarantee. The element was not to put the guarantee in legislation. So, I guess the answer is that at no time had it occurred to me to do it that way.

The Chair: I really do think the Minister of Education, the Honourable Sean Conway, has said exactly what you have just said. At least when I have heard him being interviewed on this particular bill, he has made the same statement.

Mr Jackson: The point on that is that Mr Conway specifically, and the government he represents generally, may not necessarily be the government two years from now. As someone who has worked in that ministry for more than five years, it is a question that another opposition party raised about the Conservative government of the day and the then Minister of Education, Bette Stephenson. I think it is more than appropriate to raise the question, because it is

a fundamental requirement in legislation. Its principle is, because governments change.

Political parties and governments change their attitudes, but they are generally held accountable for those promises. Legislative guarantees are there as a principle in law and a principle in legislation to protect citizens from changing governments, whether it is on a civil rights matter or whether it is on a funding matter.

The Chair: There are a lot of reasons we go on like that, Mr Lenglet, the principle upon which you are acting.

Mr Jackson: I am quite comfortable with understanding the answer. He was instructed not to discuss the issue of guarantees. That was the clear message.

Mr Lenglet: I was not so instructed not to discuss that matter. Mr Riley was replying to any instructions he had got from me in drafting the legislation as to what I gave him as a policy officer. I am saying what I said to him was because at no time had it occurred to me that a portion of this legislation would be in the form of a written guarantee as to the promise that had been made by the Minister of Education on 18 May 1989. That is the difference in those statements. I was the one to whom it had not occurred.

Mr Jackson: For those who drafted Bill 30, it had obviously occurred to them, and I am sorry that it did not occur to the people who drafted this one, but we will revisit that question during the course of the hearings.

The Chair: Any further questions? Thank you all very much. As usual, your answers were succinct and, I think, quite clear. I understand that the representatives of the Ontario Public School Boards' Association are here with their briefs now, ready to present, five minutes early.

Mr Allen: Perhaps before we get into the first brief, would it be possible to ask whether it has been possible to make some arrangements for the Ontario Public Education Network to make its presentation later in the hearings, given the fact that it has not had authorization by its governing body to appear with certain contents of a brief to date?

The Chair: If you want to deal with that matter right now, I was going to deal with it at the end of the day, but if we have five minutes, we could deal with it now. What they have requested and what the committee may want to think about before it makes its decision is that they would like us to extend by half an hour or 20 minutes next Monday. That is the request that is before us at

the present time, so however the committee members feel about that. I did not feel I could make that decision without bringing it to the committee.

Mrs Stoner: I think perhaps we should hear from the people in the delegation who are here and deal with it as you planned at six o'clock.

The Chair: Okay. I had suggested at the beginning of the meeting that we would discuss that item at 5:30.

Mr Allen: I would prefer to get it over with early so that I would be able to get away as soon as we are finished the hearings.

The Chair: We are three or four minutes ahead of time, if you can make a quick decision.

Mr Allen: Why do we not test the water and see if there is a problem? If there is no problem, let's make the decision now, if we do not have to discuss it. As far as I am concerned, staying an extra half hour on Monday is quite acceptable.

The Chair: It will mean staying until 6:30 next Monday night, and we can do that with unanimous consent.

Mr Jackson: Is there a reason why that time was chosen, as opposed to Tuesday, the first matter?

The Chair: On Tuesday it would be the only hearing and it would certainly, I feel, be unfair to other people who were asked to prepare. The people who are presenting to us today were asked to prepare in the same time frame. I do not feel we should personally extend extensions beyond that which is absolutely necessary.

OPEN is willing to come before us next Monday. Actually, that is their first choice. We could not get anyone on Monday to change to this week, so that is the alternative they have suggested to us today. Is everyone for staying until 6:30 next Monday night then, and then we will start clause by clause on Tuesday? Will there be a quorum here next Monday night? Can you determine that right now?

Mr Jackson: Funny you should ask that.

The Chair: It is not going to be fair to them to say we will be here if we will not.

Mr Jackson: You will be here, will you not, Madam Chair?

The Chair: That, I am afraid, will not suffice. Do we have a guarantee that we will have at least four members of this committee?

Mr Keyes: Yes.

Mr Jackson: I heard four yeses.

The Chair: Our clerk will inform OPEN this afternoon that we will be hearing them from six

to 6:30 next Monday evening, 27 November. Now we will go back to the presentation of the Ontario Public School Boards' Association.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

Mrs Lafarga: I must say, just to advise you, the lateness of our brief's arriving was because we only had the briefing on Thursday and found that we would be presenting on Monday, so this has taken a fairly inordinate effort on the part of our staff over the weekend to prepare this brief.

The Chair: You will be compensated accordingly. Mr Adams is breathing down your back.

Mrs Lafarga: They have time off, but they are finding trouble finding the time off days.

Our brief is fairly complex and I want to take the opportunity to read through it so that we make sure we get all the complexities in here.

I want to thank you for the opportunity to appear here today. We appreciate that you are committed to the implementation of this legislation by 1 January 1990, but we are concerned about the compression of time for the passage of these bills because we believe that it makes likely the possibility that any problems with the legislation will receive only superficial attention. I am addressing in our brief general observations and specific provisions under the legislation.

General observations: In introducing the government's policy to be implemented through Bill 64 and Bill 65 on 18 May 1989, Mr Ward, then Minister of Education, linked the policy to the extension of funding to separate secondary schools. He stated, "It should be noted that these changes bring to a conclusion the last outstanding issue relative to the decision of this province and this House to provide equality of opportunity to all children in this province, regardless of whether they are enrolled in the public or separate school system."

1630

We note the conclusion of the outstanding issues, but there are several observations on this statement that we wish to make. We are not clear when the government or House made such a decision. Bill 30 implemented the policy decision to extend provincial funding to secondary grades 11, 12 and OAC, to provide grants for grades 9 and 10 on a secondary basis to the separate school system and to provide rights to Roman Catholics to direct taxes for secondary school purposes. In itself, this is not a decision to provide equality of opportunity to children enrolled in either the separate or public systems,

nor do we believe such a decision will be implemented through Bill 64 and Bill 65.

Rather, the decision appears to be one to treat both systems equally—equally poorly. While some may characterize the pooling policy as the Robin Hood principle, taking from the rich to give to the poor, there is no richness. There is not a school system in the province that has the resources to provide for genuine equal opportunity for all children. Instead there are varying degrees of inadequacy. The difference between the resources available to educate children in low assessment public boards and those available in high assessment public boards are greater than the differences between coterminous separate and public boards.

Redistribution of inadequate existing resources is no solution at all. While the government has made a commitment to increasing grant ceilings, it is important to note that this is to provide compensation for assessment losses in the short term and does not address the underfunding of elementary and secondary education.

Repeatedly the public has been assured that government policy regarding separate school education will not adversely affect public schools. To be meaningful, such assurances must ensure that the costs of policies designed to enhance the opportunities of Roman Catholics to exercise their additional constitutional rights are borne by the government, not the local public school systems. Such assurances must protect the philosophical underpinnings of the public system.

OPPSBA views with alarm the implicit intention of the government of Ontario to create two parallel school systems whose equal treatment means the same treatment. The mandates of the separate and public systems are appropriately and significantly different. The difference cannot be obscured through financing policies without very real risk to the public system's mandate to provide, as Mr Ward, then Minister of Education, said, "the best quality of education for all children of this province."

With sincerity, we ask what is the government's, this House's and this committee's policy on the relationship between separate and public schools? We trust that it is not, "We now have, as a result of Bill 30, two fully funded public school systems." This last statement was put forward in the House by the Minister of Education, the Honourable Sean Conway, in his opening remarks on second reading debate, 7 November, on Bill 64 and Bill 65. We would like

confirmation that this statement is in error and does not represent the government's policy.

We are concerned about the scope of the legislation. Notwithstanding Mr Ward's statement of conclusion, Bill 64 includes provisions to extend separate school board boundaries that were not included in his announcement to the Legislature in May 1989. These changes are not merely administrative.

Some of our specific concerns: With regard to the separate school boundary extension, the proposed legislative changes, in addition to making the administration of the pooling of commercial and industrial assessment easier, represent another fundamental shift in philosophy. Since the Scott Act of 1863, Roman Catholics have held the responsibility of taking specific action to exercise their rights to denominational education. The government intends to extend separate school jurisdiction in areas where it does not currently exist and where to date Roman Catholics have not exercised their rights to separate schools through existing mechanisms. This is an enhancement of existing rights which ought not to be achieved under the guise of administrative changes to facilitate the implementation of pooling.

This provision will have the most impact in northern Ontario where the separate school boards tend to be smaller than the public school boards.

No impact studies have been carried out to determine the effects of the proposed boundary changes on the pooling of commercial and industrial assessment, the viability of existing public schools or programs, student enrolments or shifts in tax revenues. The impact of these boundary changes has not been included in the compensation package that you were just looking at and that was proposed, or the estimates published by the government under the pooling initiative.

As the Minister of Education suggested to the House, altering boundaries is not a simple matter. We ask that boundary changes not be undertaken without full public scrutiny of any intended changes.

To date, the government has made no commitment to provide compensation to public boards where shifts in assessment from public boards to separate boards result from changes to separate school board boundaries. We urge the government to make this commitment prior to passage of Bill 64.

Section 29, proposed subsection 126(5), maximum designation: The maximum proportion of

assessment which may be designated by a nonpublic corporation or a business partnership should be determined by the number of Roman Catholic separate school supporters rather than by the number of Roman Catholics as is presently proposed. It goes without saying that many Roman Catholics continue to support the public school system. Accordingly, simple religious affiliation should not be the governing criterion in determining the maximum proportion.

Section 30, proposed subsection 126a(1), definition of "public corporation": Vagueness. OPSBA recognizes the need to define the concept of public corporation and recognizes as well that any such definition will not necessarily be arbitrary in certain respects. What can and should be avoided to the greatest extent possible is uncertainty. If the definition is uncertain, it will: (1) make it extremely difficult for taxpaying corporations to regulate themselves; (2) make it extremely difficult for assessment officials to apply the definition, and (3) encourage boards and ratepayers to litigate over assessment status.

With this in mind, OPSBA is very concerned over the definition of public corporation set out in clause 126a(1)(b) of the definition section. The expressions "shares," "market," "regularly published," "bona fide newspaper or business or financial publication" and "general and regular paid circulation" are a litigator's paradise. The fact that this vague language appears in the Securities Act makes it no more acceptable in education law.

OPSBA submits that, subject to comments made below, the definitions set out in clauses (a) and (c) of the proposed definition are reasonably close to the legislation's objectives. They are, moreover, capable of reasonably precise application in any given case. It is therefore recommended that these clauses alone be used in the legislation and that clause (b) be deleted.

Overbreadth—"affiliate of": OPSBA appreciates the need for a concept of control within the public corporation definition. If the basic concern of the bill is the knowability of shareholders of large corporations, the same concern may obviously be present where a company is controlled by a large corporation. Situations involving indirect control necessitate the use of the concept of "subsidiary."

However, the proposed use of the Securities Act concept of "affiliation" will not serve and will indeed distort the purpose of the bill. Corporations are affiliated whenever they are related in a loose sense. For example, where a closely held family company owns a dozen other

companies they are all affiliated, but if even one of these sibling corporations is a public corporation, all of the remaining corporations are affiliates of that public corporation, including the closely held parent. They would all, by Bill 64, therefore be treated as public. The legislation should not treat all of these corporations in the same way, but rather should continue to distinguish between public and nonpublic entities in such circumstances.

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OPSBA submits that the concept of affiliation casts a net far broader than that contemplated by Bill 64. The purpose of the legislation can be adequately served by the use of the control and subsidiary concepts alone. OPSBA therefore recommends that the use of the affiliate concept be dropped from clause 126a(1)(c) in the public corporation definition.

(C) Overbreadth—"controlled by": It is accepted that some degree of arbitrariness will be inherent in any definition of public corporation. However, OPSBA suggests that there be provision made for some sophistication and fine-tuning where a closely held corporation is controlled by a public corporation and therefore, according to the present bill, is itself public. The best example would be where a one-person company sells a 50 per cent equity interest to a bank or other public corporate investor. In such a case, it should be possible for the individual shareholder to designate his or her assessment as desired.

OPSBA therefore recommends that special rules be developed to deal with the case of a corporation which is controlled by a public corporation but which has no more than 10 shareholders, of which no more than one is a public corporation.

Our third specific concern is Section 30, proposed subsection 126a(7). In his statement to the Legislature, the minister announced that additional compensation will be provided so that no public school board will experience a net loss of revenue due to Bills 64 and 65. He stated further that provincial grants to school boards will be increased to ensure that the public school system, on a province-wide basis, does not suffer a loss of revenue.

OPSBA understandably regards the initiatives of Bill 64 and Bill 65 with diffidence. These bills represent a fundamental redrawing of jurisdictional and fiscal rules which, in some cases, have existed since Confederation. These changes come at a time when public education finds itself under siege from many quarters. So it was at least

with some small relief and comfort that these assurances were received, yet the promise given by the minister is not even hinted at in the proposed legislation.

Specifically, the regulation-making power set out in this new subsection 126a(7) is entirely silent with respect to objective or purpose. Given the vicissitudes of governmental affairs, many of which have adversely affected other assurances given to public education in the past, OPSBA finds the government's silence on this issue in Bills 64 and 65 unacceptable. Put frankly, if the government is confident the assurance will be met, there is no reason why it should not be reflected in the legislation. If the government is not confident the assurance will be met, all the more reason to ask that it receive legislative status.

OPSBA therefore strongly urges the government to incorporate in the bills the promised protection. This could take the form of a notional assessment base for each public board, based upon 1989 figures, which would be increased annually in accordance with observed increases in assessment. The province would undertake to make good the shortfall between revenues actually generated and the revenues which would have been generated under the notional assessment base.

There may be other mechanisms which can be used. The point is that these devices ought not to be left to the discretion of the government of the day. As the bare minimum, the total nondirectional words of subsection 126a(7) must be redrafted to reflect the intention which has given rise to what is otherwise a totally unfettered allocative power.

Accordingly, and as an alternative, subsection 126a(7) must be redrafted to clearly state that cabinet shall make the contemplated regulations adjusting proportions such that neither the province-wide system nor any individual board will suffer a loss of revenue. OPSBA also submits that this assurance should not be limited to six years, as proposed.

If passed, Bill 64 will, according to government estimates, transfer at least \$180 million of local public school commercial and industrial tax revenue to separate school boards over six years. The Ontario government has given verbal assurances that public boards will be reimbursed for their losses with provincial grant money. However, OPSBA, which represents 92 Ontario public school boards with more than 1.2 million elementary and secondary students and over 500,000 adult learners, firmly believes that a

verbal promise is not good enough. Verbal promises, like ministers of education and provincial governments, come and go.

Bills 64 and 65 raise several key concerns. Given the large sums of local education dollars that will be lost to public school boards, the pooling legislation in particular is about more than equality of opportunity. It is about the financial future of the public school system which serves almost two thirds of Ontario's student population. It is about the real need to protect public school ratepayers against significant increases in residential property taxes should they be forced to make up for the losses in local, commercial and industrial tax revenue if this government or any government, fails to keep its promise. This legislation is about the very special mandate and responsibilities of the public school system.

It is for these reasons that public school boards have every reason to demand legislative protection for next year, for the next six years and the next six decades. If the Ontario government will not place its verbal promises in the legislation, then OPSBA seriously questions the government's future intentions and commitments to public school students, parents and taxpayers.

When the Ontario Legislature passed Bill 30, the 1985 legislation which extended full provincial funding to Roman Catholic separate school boards, the guarantee of the continued viability of the public school system was placed in the bill. This was done to assure the people of Ontario that the policy to extend funding would not be done at the expense of the public school system.

Now, by another action of this Legislature, a significant amount of local public school revenue will be diverted to separate school boards. Once again, public school students and taxpayers require the legislative guarantee that their school system will be fully reimbursed dollar for dollar.

OPSBA's opposition to the pooling of industrial and commercial assessment is a matter of public record. We make these submissions today in a sincere effort to assist the Legislature in the passage of legislation that can be effectively implemented across this province. Thank you very much.

It is very rude of me not to introduce the people here with me today. I have Penny Moss, executive director of the Ontario Public School Boards' Association and Michael Hines, counsel, who is with the firm Hicks Morley Hamilton Stewart Storie.

The Chair: Thank you very much. The recommendations have been incorporated into

your brief so there is no need to read them into the record. Questions, please. We are having a lot of firsts today. Obviously the brief is very clear. I guess, unless you want to make some closing remarks, Mr Allen is going to.

Mr Allen: Thank you very much for your presentation. As you said at the beginning, it is detailed and the issues complex. I apologize for the fact that our critic is not here, whose head is more completely in this question than my own at this point in time, although my head was in another place that you described very liberally in the course of this document. He, by virtue of being a representative of Scarborough, is very busy defending the Rouge Valley options at this point in time and is staying with an opposition day in the House for the afternoon.

Let me ask you just a fairly straightforward question with respect to the tables that you have been presented from the ministry. Were there any substantial problems regarding the projections that were in those documents with respect to your board's gains, losses or otherwise?

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Mrs Lafarga: I think one of the issues that you have to be extremely careful about is that those figures are based on 1987 assessments. They are based on 1988 financial information from boards. So they are already two years out of date. They also do not take into consideration any assessments of the transfer under the partnership assessment. I think there were no estimates for that. The telegraph and telephone were not included in any of the estimates that were done that we are aware of. Also, the extension of the boundaries came after those estimates were prepared.

So, yes, we have some very real concerns about those estimates and that is why we are very adamant on the guarantees that we want to see in this bill, because those estimates are quite out of date. We are currently working on more up-to-date and more reliable data and we will have that to work with our own impacts.

Mr Allen: Could I perhaps put the question a slightly different way then? Recognizing that the information is based on what are now out-of-date data and recognizing that it does not take into account certain elements that are part of the equation and that therefore these are not the final figures that will be being dealt with in the actual calculations that will result in the final transfers that are made and the subtractions and additions across the board to the two systems and their respective coterminous boards, is there any reason to believe, on the basis of this informa-

tion, that you will not be getting accurate projections and full information that satisfies you with respect to the adequacy of the calculations that will be made? I think the government has at least said that it recognizes too that these are not the figures that will be finally dealt with when it comes to the actual apportionments themselves.

Ms Moss: We would like to point out that on the boundary question, to our knowledge, no studies have been done, let alone the question of whether they are out of date or not, so that is a commitment and a potential cost that we do not know about, nor does the government, and we think is part of the Bill 64 pooling package.

We would like to be in a position to review data as they are collected by the government and as these analyses are done. We believe that what will be important is for the public sector, as well as the separate sector, for that matter, to be able to at least come to the same conclusion the government comes to; that the figures that are going to be used next year are accurate figures. As the president suggested, we hope to have the ability to match, to be able to calculate these for ourselves, but we also need to be able to verify the government's figures.

Mr Allen: Have you made that request and have you had a response?

Ms Moss: We have not had a specific response to it. I think we should point out, as did the officials who spoke before us, that it was only last Thursday that we got an opportunity to deal with this in detail and we focused most of our attention on the legislative provisions themselves rather than the implementation.

Mrs Lafarga: It is just the same as when you are negotiating contracts. You need to be working from the same figures. That is a very real issue for us.

The Chair: Mr Lenglet, did you want to verify that these deficiencies in the figures are there in the exact way in which they have been mentioned? It is just that we did not have this information when we had the opportunity to question you.

Mr Lenglet: Can I have that again, please, I was discussing—

The Chair: We have a list presented by Mrs Lafarga of deficiencies with these data and I wondered if you wanted to verify that all those deficiencies actually existed.

Mr Lenglet: I want to confirm first off that the document that was presented included telephone and telegraph receipts.

Mr Jackson: You are not being picked up by Hansard.

The Chair: Why do you not sit down?

Mr Lenglet: Okay, I will try it that way.

The information contained in the impact studies includes telephone and telegraph receipts.

Second, although it is not titled properly, the information attempts to include both public corporations and partnership assessment on the data in the impact studies. No separation was made of those two elements. In fact, what we tried to do was estimate what the commercial assessment roll would look like if we got a fairer sharing. If you look at the numbers carefully, what you will find what we did is that we said, "As a result of this exercise, let us change the commercial assessment roll so that the split between the public and the separate board is the same as the split for the residential assessment in the municipality."

That may or may not be a correct assumption, but in doing it we in fact attempted to include both public corporations and partnership assessment. Only when we get the assessment rolls in January will we know what the exact amount of the change was and what the amount was under various categories. At that time it is our full intention to make the amount of that change known and to share with the school boards the calculations we used to guarantee the increase to the ceiling that has to occur and the definition of which boards are suffering a loss even after that increase in the operating grants and the amounts of payments that would have to be made. It would be our full intention to share that information.

Mrs Lafarga: I am sorry, but I do not think you addressed the separate school boundaries and the—

The Chair: I am afraid we are only five minutes from the end and Mr Jackson has asked the question.

Mr Jackson: My question has to do with the statement on page 4 which deals with the compensation for shifts as a result of the change in school boundaries. Is there any indication as to why the government is not in a position to give you the costing of that? Have they explained why there is no costing for that? We will deal with the commitment, but—

Mrs Lafarga: The announcement came after, the original announcement. I will ask our executive director as to why we do not have the figures.

Ms Moss: The only indication that we have is that it is difficult and that the ministry does not believe that the impact will be large. To my knowledge, work has not yet begun to even look at whether it is possible to develop the impacts prior to actually extending the boundaries and to see what decision taxpayers make.

Mr Hines: Draft regulations with respect to boundaries have been released only today.

Mr Jackson: Today?

Mrs Lafarga: Today, or we received them today.

Mr Jackson: Perhaps then the ministry might wish to respond on the two points. One is what assumptions they were working with to indicate that the impact would be minimal. First of all, I would ask if they stand by the statement, and if they do, what assumptions were utilized in order to come to that?

Mr Lenglet: I will stand by the statement. I think it is important to realize that when we are talking about the boundaries issue we are talking about the filling in of the gaps in the areas of separate school support and that those occur only in the townships. They do not occur in the urban areas, the towns and the cities, where most of the commercial-industrial assessment is, so in fact you are dealing only with filling in gaps in townships.

We do not have any data on what separate school supporters exist in those gaps. One could make an assumption that they would probably not contain a large number of separate school supporters by the very fact that they have not done anything to form a zone which would support the separate school system, but certainly we have no knowledge of what the persons in that area will choose to do at such time as they are able to make a designation to the separate school system. It can only be assumed that it is not large and that they are in areas where there is not a large amount of commercial assessment.

Mr Jackson: You are indicating that the minimalist impact of this administrative adjustment is because it is primarily in a rural area, but it may be a significant adjustment to that rural board.

Mr Lenglet: I am saying that the issue of the impact of filling in the gaps is not felt in urban areas because the gaps do not exist.

Mr Jackson: That is the basis for its being minimal, but within the context of that single board where the adjustment is made, I sense that you have not done one example. You have not

taken one board where a zone is going to be expanded and examined that?

1700

Mr Lenglet: We have no capacity to understand what changes in designation will be elected by those persons who live in the areas that are not within a separate school zone. All I said beyond that was that for the most part this occurs in townships and for the most part there are not significant amounts of public corporation assessments in those townships.

The Chair: I think that is the uncertainty that has been brought before us by this delegation.

Mrs Lafarga: I think that we want to dramatize one of the points we have made. Prior to this legislation, it was for Roman Catholic separate school supporters to elect to have a division. Now that it is being legislated, it is quite a dramatic change. It is the first time since 1863 that you have extension this way.

Then you have this complication of no assessments, and they will be quite dramatic in the north because the mines are in the north, and they could have a very significant impact on moves for resources.

Mr Jackson: My final question has to do with this notion of the guarantees of the government and the reluctance to—They are saying that under some circumstances they will assure us that public boards do not suffer a net revenue loss but under other circumstances they are reluctant. Can you expand on your discussions with the government in any of the forums in which this has been raised with respect to the reluctance to even admit publicly?

The whole statement of Mr Ward might be valid, because at the time he was not contemplating zone adjustment, but Mr Conway's statement now is highly suspect, given that this item was currently being discussed with your organization and there was not agreement. There is agreement that it would be a net revenue loss. We just have the opinion that it would be minimal, and you have the opinion that it will not be minimal, so the statement is highly suspect with respect to net revenue loss as a guarantee.

Mr Hines: The answer that we received when we put forward the request for a legislated guarantee was essentially that the minister's word is good and that we ought to be satisfied with that. There was no technical obstacle raised by Mr Riley, who was responsible for drafting the bills. He said essentially that he could see no reason such a legislative guarantee could not be

incorporated. It was simply not part of his mandate in drafting the legislation at this point.

Mr Jackson: Has anybody raised the question, and I will with the minister personally—I raised it earlier—of why under Bill 30 he was prepared to allow that language but under this bill he is not prepared to allow that language? We are still dealing with the same minister, with essentially the same basic issue of implementation in funding the parallel separate system.

Ms Moss: My recollection of that particular issue was not in fact dissimilar, in that it was through a really intensive and not a condensed process, as is the case this time, that those commitments were obtained. In the prior statements, Bill 30 was seen by the government as a much bigger policy issue than this one is, but if you can do it once, you can do it the same way again.

I think that it is important to note that this bill does include some protective provisions for existing rights. For example, there is a legislated commitment to separate school students affected by boundaries, to separate schools in terms of the ownership of that school affected by boundaries and to separate school trustees who would theoretically be no longer qualified to hold office. There is protection for those. It seems to me that if some of the protections necessary to implement this bill fairly can be there, so can the others.

The Chair: Mr Lenglet, have you, as a ministry, begun to think about an impact study on what seems to be a more significant issue in some people's minds?

Mr Lenglet: Not at this time, but I want to point out something. As I described previously, I think I used the example of a municipality where the assessment of what existed in the public corporations went from 99 per cent public and one per cent separate to a ratio of 81 to 19, which I think I used as the example, and we would go one sixth of the way each year. If it were indicated that the final position on residential assessment was not 81 to 19 but something more like 78 to 22—in other words, there was more movement there than we had expected, and let's assume in this case that that was attributable to filling in the gaps in the separate school board area—in fact the measure we would have of the amount of impact of that change would be larger. To that extent, the methodology we intend to use in releasing the impact studies after the return of the role on 26 January would capture that kind of number. It would not be attributable necessarily to the gaps, but it would exist as a shift in the

amount of assessment and therefore a change in the amount of assessment that would be subject to transfer under the new rules. We could not attribute it to gap or to decisions of persons who lived in the gap to support the separate school system, but it would be contained in the numbers.

Ms Moss: Let me just clarify. OPSBA's major concern is not around the question of filling in the gaps. These are where we have got circles and the spaces between them are going to get filled in. This is a situation mainly in southern Ontario and mainly in the county school boards. Our concern is much more with the issue that will be covered in the regulations, which is where there is a smaller current separate school district compared with the public school district jurisdiction and the intention is to create, through regulation, coterminous boundaries. There is potentially a much greater area of geography to be taken in.

In the absence of impact studies, in the absence of even knowing which boards specifically might have those boundary changes, it is not clear to us how great the shift might be and whether any of the calculations covered that. We could accept it if, as Mr Lenglet is saying, any changes in assessment ratios produced by this bill will be included in the calculations of the adjustments necessary. We would like to see that statement clarified, and not the possibility that unless it is directly related to the pooling of industrial and commercial assessment as we know it, they will be excluded.

The package is total. That is one thing. If it is limited, it is another.

The Chair: Thank you for clarifying that. We have gone over time, and the reason I have been letting that happen is that the Ontario Secondary School Teachers' Federation is not here at the moment. I know they have a very good reason for not being here. It was suggested that they appear at 5:30 pm and I think they may be coming in now, so we will close. If you have a closing remark—

Mrs Lafarga: No, I would just like to thank the committee and thank you, Madam Chair, and to reiterate that these issues are extremely complex and we would really ask that the government take time to make sure that it is not implementing something that is going to cause a lot of hardship and a lot of headaches.

The Chair: I am very happy that you differentiated between those which are legislative and those which are regulatory, because that certainly does give a bit more flexibility to what can be done. Thank you very much.

Mr Head is not here. What happens now? Ms St Amand, are you willing to present without your colleague or are you going to give us a time when he may be here or—

Interjection.

The Chair: I know, but they were 5:30 originally, before the other group backed out. Would OSSTF be ready to present at this time?

Mr French: As you might have been aware, our president has been delayed and is locked into another meeting. We are expecting him at 5:30.

The Chair: We have a great difficulty, Larry, because we are going to have to leave for a vote at 5:45. That is something we have been forewarned about, so it is a case of beginning now or not getting your full time.

Mr French: Like the previous presenters, this came upon us suddenly. Other arrangements had been made.

The Chair: I am asking you to be very flexible. I am sure you have some people among you who are quite capable, because I recognize them and I know they have been here before.

Ms St Amand: It is just that the president, I am sure, regrets not being able to be here at this time to participate in the presentation.

1710

The Chair: We will be able to stay until 5:45. As soon as he comes in, he can take over from where you are if you prefer that. I just want you to be given your full time. I am sorry that I have to do this.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

Ms St Amand: It is a pleasure to be here on behalf of the Ontario Secondary School Teachers' Federation and to present to you our views of this proposed legislation on pooling. I believe everyone has a copy of the report. It was prepared under a relatively short time line and I beg your indulgence in being gracious with some of the errors in the document itself. We will be providing you with a corrected copy as soon as possible.

We believe that the pooling of commercial and industrial assessment must be seen in the context of the Ontario grant plan and it is our observation that in 1989 there was a dramatic withdrawal of grant support from public secondary education. In fact the provincial grant amount dropped 15 per cent.

The Chair: There he is.

Mr Head: Sorry, I was told 5:30.

The Chair: My agenda says 5 o'clock. So we will have to split the difference, which we have just about done.

Ms St Amand: The president has asked me to continue. Please feel free to intervene.

The provincial grant amount dropped 15 per cent in one year, leaving the provincial share at a 40-year low of 27 per cent. What this amounts to is that the local taxpayer has had to contribute an additional \$350 million over the previous year towards approved expenditures; that is, an additional \$350 million in the grant itself.

In this brief we offer a formula on compensation that will ensure that it is both adequate and accurate. In the definition of the word "accurate," we mean the word "just." We also warn the government that the cost of compensation will be significantly greater than that which was indicated in the government estimates.

I would like to turn to the first-page introduction, and the major point in this part of the brief is that our preliminary analysis and recommendations are offered to help committee members appreciate the necessity for the government to set the elementary and secondary fiscal house in order before any move is made to implement pooling. The first chart on this page is a summary of grants and expenditures for public boards in 1989 compared to 1988. What you can see there is that at the elementary level the grant was 8.49 per cent more but at the secondary it was 15.25 per cent less, and this has amounted in total provincial grants as a percentage of net over expenditure of minus 2.03 per cent. So that in spite of inflation, in spite of the new special initiative grants and stable enrolments, total grants to the secondary education dropped by over 15 per cent. This reduction in the provincial share of around 27 per cent is the lowest level of support that the government has given to secondary education since 1944.

On page 2, we address the inadequacy of the basic per-pupil block grant that occurred in 1989. Of significance on this page is the chart. The chart indicates that in 1987 the general legislative grant as a percentage of public secondary school expenditure was about 37 per cent and that in 1989 that has gone down to around 27 per cent. That is the nosedive that is all too familiar about the provincial support that education has been receiving over the last 12 months.

On page 3, we make the point that we made earlier, that the 6.1 per cent increase in the general legislative grants that was announced for 1989 was entirely consumed by the special

initiatives grants that were paid for the new programs that were mandated by the province; for example, all those things that were mentioned in the throne speech initiatives. Most of these impacted at the elementary level so that there was no increase whatever to fund the ongoing programs at the secondary level, and that includes special education. In fact, in real terms there was a significant decrease. The OSSTF finds this completely unacceptable.

The second is that the preamble to the development of the 1989 general legislative grants warns school boards that the GLG allocation is fixed and that it will be amended retroactively to ensure that the, and this is a quote from that preamble, "total amount of grant actually paid out to school boards is equal to the GLG allocation."

What this means is that if there is an additional unanticipated enrolment over what was planned, no adjustments will be made. This represents a repudiation of a central commitment within the grant plan, and that central commitment is that the GLG would add whatever additional moneys were required to fund the education of students to approved levels. Now the cost of additional unanticipated enrolment is to be borne by all boards through reduced per-pupil grants. That is the impact, from what we can see, of what was written in the preamble to the 1989 general legislative grants. We find this position by the government to be needlessly punitive. We would like to remind members of the committee that the Ontario budget indicated an operating surplus for 1989 of \$2.6 billion. It is clear to us that the fiscal means are there to fund education properly in this province. The question is clearly one of having the political will to put that money into education.

We have our first recommendation. We will be reading those into the record at the end. It is a three-part recommendation.

We are proposing, first, that the basic block grant be adjusted retroactively to account for inflation and pupil enrolment increase and, second, that the 1990 basic block grant reflect that adjustment and, finally, that all other category grants be increased to reflect the boards' financial needs in addition to any increase in the basic block grant.

The next section of the brief deals with the secondary equalized mill rate for 1989, and we make two major points here.

The first is that the local share of approved costs was significantly higher and the explanation is given there in the two bullets. The key

bullet is the second one, that the factors which determined the equalized assessment for the school boards were adjusted so that the total equalized assessment in the province fell by 4.9 per cent. This happened in the face of an expected four per cent increase in the actual assessment base. We estimate that the net effect of these changes was to shift about \$350 million in approved costs from the GLG to the local tax base.

The second negative factor in the 1989 grant plan was the announced larger increase in the unapproved costs. The table, which you will find on page 6, illustrates how much larger this year's increase in unapproved costs is than those that have occurred in previous years.

There is an error in this chart. The years are correct, but the year 1989 does not appear and it should, so that the chart should read, with one more column, "1989," "\$1,900,000,000" under "Total Unrecognized Cost" and that in the column "Yearly Increase" the parallel amount is the "\$550,000,000" for 1989. The chart is then lowered accordingly, so that the 1988 is \$1.353 million and the comparable figure would be the figure would be \$226 million. I hope that is clear.

The Chair: You did prepare this in a very short time.

1720

Ms St Amand: Yes, it was prepared very quickly, but the point of that chart is to show how high the increase is in the last year. If you just look at the chart in the first four years that are there, the increments are almost all the same size until we get to the year 1989, and then there is a big leap.

In summary, because of the 1989 grant changes, public boards have been forced to raise property taxes in order to replace the withdrawn grants, to pay the costs arising from increased enrolment and to cover the cost of inflation. It is on that basis that we propose the third recommendation.

The third part of the brief deals with the OHIP payroll tax. It is the position of the OSSTF that the general legislative grants structure include a grant equivalent to the estimated contribution of the boards to the OHIP payroll tax.

I would like to turn to the fourth section, on pooling and grant compensation. The grant is on this page, on graph 2, which is the same graph as we used in our last presentation, but we have added the year 1989. What that illustrates, if you look at the public share and the separate share for 1989, is that in spite of the fact that the public school system educates over 70 per cent of

students, we are getting barely 50 per cent of the grants. The second point is that the gap is narrowing between the separate share and the public share even though the number of students involved in both systems is significantly different. It is within the context of this graph that we see the whole concept of pooling occurring.

On page 9, OSSTF urges that any model for compensation be based upon the following principles, and there are two. The first is that compensation be based on actual lost revenue and the second is that compensation flow to those boards which have lost revenue in the amount of the lost revenue.

Recommendation 6 is intended to ensure that no boards lose any money as a result of the implementation of Bill 64 and Bill 65 and suggests that this needs to be done in a very ongoing way. The second bullet suggests that the additional grant be a supplementary grant. This would have the effect of maintaining the differences that we believe are appropriate in the level of grant distribution between the two systems.

We remind you of the government commitment at the bottom of page 9 and on page 10 and, with all respect to the minister, we recommend that the no-net-loss commitment be written into the legislation to bind future ministers and governments to the principle that he has so forthrightly adopted.

In conclusion, the OSSTF contends that the provincial government should be the instrument through which equity in funding is delivered to separate boards. The instrument should not be public boards. By implementing this piece of legislation as it is proposed the government would in fact be defaulting on its responsibility.

I would like to turn to Jim.

The Chair: Read the recommendations into the record please.

Mr Head: Recommendation 1: That the basic block grant for 1989 be adjusted retroactively to account for inflation and pupil enrolment increase; that the 1990 basic block grant reflect this adjustment and be further enhanced to reflect inflation and per-pupil enrolment in 1990; that all other category grants be increased to reflect boards' financial needs in addition to any increase in the basic block grant.

Recommendation 2: That the practice of topping up the general legislative grants to reflect enrolment increases be continued.

Recommendation 3: That the government add to its 1990 grant model an amount to upload the

\$350 million in approved costs which in 1989 were shifted on to the property tax base.

Recommendation 4: That the general legislative grants structure include a grant equivalent to the estimated contribution of boards to the OHIP payroll tax, that the grant be specifically labelled for this purpose and that it be in addition to any other grants.

Recommendation 5: That recommendations 1 to 4 be implemented prior to any imposition of the pooling of commercial and industrial assessment on public boards.

Recommendation 6: That the following model for compensation be implemented should the government choose to proceed with bills 64 and 65:

1. As part of the calculation of school board estimates, the amount of equalized assessment transferred to the coterminous separate board be determined;

2. An additional grant be paid to the public board, calculated as follows: The grant would be the product of the equalized assessment transferred and the difference between the provincial equalized mill rate and the actual equalized mill rate for the board.

Recommendation 7: That the guarantee that no public board will suffer a net loss of revenue due to the implementation of pooling be written into the legislation.

I do apologize for being late. I had some misinformation, obviously, on time. I would like to make just one brief comment in terms of the overview.

In examining funding at the federal level, it is clear that in the 1950s the individual contribution to the tax rate and the corporate contribution to the tax rate was roughly 50-50. In 1985, the individual contribution was 80 per cent and the corporate contribution 20 per cent.

I would like to suggest that this is exactly what is happening on the provincial level. The government is shifting more and more of the taxes to the individual and less and less to the corporations. Similar statistics are available. I do not have them in front of me but I do not think it would be very difficult to check that the same kind of inversion is taking place.

Mr Allen: I want to thank the presenters for their detailed examination of the issue and their presentation of it to us.

I think we should perhaps explain to the president of the OSSTF that he was not expected to be here at 5:15 pm. The way the afternoon played out, with the absence of one set of presenters and the fact that we were going to be

having to depart for a vote at 5:45, meant that there was an opportunity for you to get on earlier. If you got on later, you would have been dealing with a 15-minute operation and we did not want that to happen. So it is no fault of yours, Mr Head.

I like very much the thrust of your presentation because what it essentially appears to be saying is that at this point in time, at the very minimum, let's halt the downward contribution of the province to the proportioned shares of provincial education costs and, second, let's make up for some of the other burdens that are being placed upon the system before we get on with any calculations of who should be getting what under all this redistribution system that is going to be undertaken.

I presume that is a fair, quick summary of where you are coming from. Certainly I share that and our party shares that perspective and the assumptions behind it. They are ones that we have operated from for some time.

There were two parts of your presentation that I was not entirely clear about. One you can clear up, the other may be too complex for me to grasp in any case. On page 8, I was not sure that I followed your quick explanation of what was being presented there and the significance of the graph. Maybe you would run that by me once again.

Mr McEwen: The share of the total GLG which has been allocated to the public boards has diminished over the years while the share of the total GLG that has been allocated to the separate boards has increased. We are all quite aware of an enrolment shift and therefore one might expect something like that.

The significance, however, is that the enrolment shift has been along the lines of about six percentage points whereas the grant shift has been somewhat larger. The public system has lost roughly 20 percentage points in its share of the grant, so that is what we are pointing out, that the shift in the distribution of the grants is substantially larger than the shift in enrolment. In fact, if there was a third column there, a column which showed the GLG as a percentage of the total government expenditure, you would find that the public share of the GLG drops in harmony with the other bar, the bar that would show the total GLG as a percentage of the total government expenditure or, another way of putting it is, the reallocation of resources away from education has been paid for entirely by the public school system.

1730

Mr Head: I think what we are saying is you would expect to see a proportionate decrease in the grant with the proportion of students. It should sort of flip, but it has not. We are losing double rather than—

Mr Allen: We are talking within the context of the GLGs, we are not talking in terms of overall educational expenditures by boards, which of course drop in other elements. Okay, I got you.

Recommendation 6 sort of lost me, and I am not sure, it may be just too technical to know exactly where you come out on your second bullet, "An additional grant be paid to the public board, calculated as follows." Is there some way that you could put that in layman's language so that we can appropriate it? Your finance department got carried away on this one in terms of telling us something that we could appropriate, I think, on the committee.

The Chair: If you had a board with some fictitious figures, it would be helpful, I think.

Mr Head: Sure, we probably should have provided an example and a little formula. To expedite, I will ask John if he would pick up. What we are trying to say is, we do not believe that the figures are accurate in terms of the \$35 million. We have a breakdown, board by board, and a projection for the future, and we know that based on real data, that these figures are not correct. But I will ask John to explain the formula.

Mr McEwen: I would like to begin with two points; first of all, the minister's promise. The minister has said quite forcefully that no public school board will lose because of this pooling proposal. Second, the existing grant compensation plan does not compensate boards in the proportion to their difficulty arising out of the pooling proposal. In fact, it is a flat grant plan which rewards those who are not affected by pooling, those who benefit by pooling and those who lose by pooling in exactly the same way.

It seemed to us, therefore, that to implement the minister's promise, a much more sensible thing to do would be to return to the public school boards that portion of the lost revenues that they would not receive through the regular grant plan. So the idea of the difference between the actual equalized mill rate and the provincial equalized mill rate is the portion that the public boards will lose at present if uncompensated. It seemed like a fairly straightforward and direct way of dealing with it.

Mr Allen: So you are not so much questioning the minister's commitment as trying to hold him to it in quite precise and adequate formula terms. to it in quite precise and adequate formula terms.

Mr McEwen: Suggesting the way it can be determined.

The Chair: Mr Jackson, and I have Mr Keyes as well, so if you would be fair, we would each have five minutes.

Mr Jackson: I would like to build on the questions that Dr Allen has raised because that was the area that I wanted to pursue. You have shared, obviously, this concern with the ministry as late as Thursday, the one of recommendation 6?

Mr Head: You would have to ask our legislative researcher on that information. Unfortunately, I have been in Ottawa all week. Hansard is just noting that we are getting a negative response from the legislative assistant.

The Chair: I suppose we should clarify. You were part of a briefing on Thursday that has been referred to by previous presenters. Was your association present?

Mr Head: I was not, but my affiliate must have been.

The Chair: Okay, just to clarify that then.

Mr Jackson: We are not sure. The Ontario Teachers' Federation may have been, but we are not sure if the OSSTF was participating on Thursday, is that not correct?

Mr Head: Once again, I was, unfortunately, at Canadian Teachers' Federation in Ottawa all week and—

Mr Jackson: Perhaps we could call Mr French to the table.

The Chair: Mr Jackson, I think the better question would be, do they feel the minister has this information? What day he got it on would not be important.

Mr French: No, we were not at the briefing, and I have just been informed that OPSBA was the party that was briefed. This brief is hot off the press, and the minister has not been treated to a sharing of the concepts within it.

Mr Jackson: I am reluctant, with four minutes left, to invite the ministry representative to react to what he has just heard, but I would—

The Chair: To react to the entire brief?

Mr Jackson: No, recommendation 7, which is the special interest that I had expressed.

The Chair: Mr Keyes, is your question long or short?

Mr Keyes: Short. It was actually a follow-up to Mr Allen's.

Mr Jackson: Perhaps we might invite the ministry to react to some of that comment.

The Chair: Could we do that in about two or three minutes, Mr Lenglet, recommendation 7?

Mr Jackson: Six.

The Chair: You said seven, a second ago.

Mr Jackson: Did I?

The Chair: Is it six or seven?

Mr Jackson: I have thoroughly exhausted recommendation 7—

Mr Keyes: Previously.

Mr Jackson: Previously, yes. It is recommendation 6.

The Chair: Okay, it is 6 that I think Mr Jackson wants you to speak to.

Mr Lenglet: Okay, speaking to it quickly, and perhaps not fully appreciating the import of it, what the funding model attempts to do with the money that is paid in, the estimated \$180 million, is to maintain the equity of the grant plant, which means that the additional money is supplied to both public and separate boards to bring the public system as a whole to a point where it does not suffer a net loss of revenue.

If I read this correctly, what it is attempting to say is, you have transferred some assessment. In doing that, there has been a net loss of revenue to the public board to the amount by which tax revenue exceeds the grant change. Rather than attempt an equitable solution, ie, increasing the grant ceilings for everyone and paying the money in, just make some special payments to the public board.

I would find that problematic in that I believe the basic equity of the funding model is one of the key ingredients of its success in providing money to both assessment-rich and particularly assessment-poor boards, and I believe that what we have done or recommended with the use of the \$180 million is superior to what I understand this to say, having read it quickly.

Mr Jackson: Perhaps then, we might get a more written response to recommendation 6, which is of special interest to perhaps all three parties for these hearings.

Mr Lenglet: Certainly.

Mr Jackson: Within a week, for next Monday, say. With a minute left, if I might, I am intrigued by recommendation 4. I guess you have put into perspective this whole notion of trying to nail Jello to a wall when you talk about trying to nail the funding formula for education purposes

in this province, because the government can change it so easily and so frequently, such as by rolling in special education, adding on the payroll tax and so on.

I guess that is a disturbing part. I do not know how we overcome that, unless the government wishes to deal with the principle of not offloading more and more responsibilities to the local taxpayer. Clearly, that recommendation has been enunciated in several forums here at the Legislature, but it is symptomatic of a whole series of things that are being adjusted. Could you just briefly comment about, what you are really asking for here is some sort of protocol with respect to the impact of legislation on the grants, some sort of moratorium of abuse so that we are not put through these hoops? I was not trying to lead you. I am just—

The Chair: No, I could see that at all, Mr Jackson.

Mr Head: I am sure the Legislature will find its own solutions, but I think it is based on the observation that the actual funding available to boards is going down. Every time this kind of cost is placed on boards, especially when they are not prepared for it, even though their fiscal year is January to December, it certainly catches them off board. A lot of negotiated settlements are two-year settlements, as you know, so they are very much caught off board. Within the context of the fact that money is getting tighter and going down provincially more and more, the taxpayer is the only alternative. The question is whether that is fair.

1740

Mr Keyes: Just a follow-up to Mr Allen's question, I am wondering whether or not the Ontario Secondary School Teachers' Federation had read through the impact study on coterminous sharing and whether you were disagreeing with any of the statistics. This was kind of a snapshot in time as to the impact of pooling. Could you make comments as to whether that was an acceptable document?

Mr Head: Yes, we have studied it board by board and we have extrapolated those figures which are even out of date now, we believe, with the figures we have got from boards, board by board. I will let Mr McEwen, who has put it all in

his computer and done the studying, tell you a little bit more about it.

Mr McEwen: The study was done on behalf of the Ontario Public Education Network, so I cannot at this moment refer to the study in detail, except to say that I believe there is the same sort of cost overrun in terms of Bill 64 and Bill 65 as there was in terms of Bill 30. I think there is the same sort of escalation of cost as there was starting with Premier Davis's expression of \$40 million as being the cost of the extension.

Mr Keyes: I guess what we are saying is that we have also said you had to have figures on which to base the estimates, so therefore that is all these are. When the actual rolls come in for the current year, then that is the basis on which the adjustments will be made. Therefore, whether we would acknowledge that they are not accurate to date, still with the best estimate from the Treasurer, who looks fairly closely at this, his estimate certainly was that given the changes we will see, actual 1989, \$180 million would be adequate. I think we just have to wait and see whether any of those projections you make, comparing it to a former government's suggestion regarding costs of implementing Bill 30, are any closer in our prognosis.

Mr Allen: On recommendation 4, supplementary to Mr Jackson's question, which of the three possible interpretations of recommendation 4 is recommendation 4 actually saying? Is it addressing the problem of advance payments on OHIP premiums, is it addressing the grant, which is exactly the amount of the OHIP payroll tax or is it addressing the OHIP payroll tax minus whatever the system has paid for OHIP premiums in the past?

Mr Head: I think it would be the third alternative, in my understanding. We are saying the difference.

The Chair: I think that completes our questions and our time for the OSSTF presentation. Thank you for presenting your thoughts so succinctly and so clearly.

We will adjourn this meeting until tomorrow at 3:30, when we will continue with the hearings on Bill 64 and Bill 65.

The committee adjourned at 1745.

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Hines, Michael A., Legal Counsel; with Hicks, Morley, Hamilton, Stewart, Storie

From the Ontario Secondary School Teachers' Federation:

Head, Jim G., President

St Amand, Doris, Vice-President

McEwen, John, Chair, Educational Finance Committee

French, Larry, Legislative Researcher





No. S-7

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Education Statute Law Amendment Act, 1989

Ottawa-Carleton French-Language School Board Amendment
Act, 1989

Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue
française d'Ottawa-Carleton

Second Session, 34th Parliament

Tuesday 21 November 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 21 November 1989

The committee met at 1535 in room 151.

EDUCATION STATUTE LAW AMENDMENT ACT, 1989 (continued)

OTTAWA-CARLETON FRENCH- LANGUAGE SCHOOL BOARD AMENDMENT ACT, 1989 (continued)

LOI DE 1989 MODIFIANT LA LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON (suite)

Consideration of Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment, and Bill 65, An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988.

Étude du projet de loi 65, Loi portant modification de la Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

The Chair: If I may, I would like to call the standing committee on social development meeting on Bills 64 and 65 to order, please. As members, we are going to be called to a vote at 5:45 today. It looks like this is going to work out rather fairly, because I am going to ask the presenters to confine themselves to 25 minutes, rather than 30, to accommodate and to make each person's presentation of equal length. So if I may ask the members of the completion office, Tom Reilly and Peter Lauwers, to come forward, we could begin. I realize that everybody who is presenting on this subject is doing it at rather short notice, although you have known the subject has been coming for some time. Please begin.

COMPLETION OFFICE SEPARATE SCHOOLS

Mr T. Reilly: Good afternoon, ladies and gentlemen. My name is Tom Reilly. I am the executive director of the Completion Office Separate Schools. With me is Peter Lauwers of the firm Day, Wilson, Campbell. He is a legal counsel for COSS. COSS is a co-ordinating office for the main separate school associations and represents bishops, trustees, teachers, par-

ents and officials. This presentation represents and is supported by all of those groups.

We have consciously decided on one presentation only, out of respect for the time of the committee, to facilitate your work. The presentation is based on two principles. The legislation must respect personal choice in the designation of assessment wherever that is possible, and where personal choice and designation are not possible assessment should be shared equitably. Since the presentation is largely technical, it will be made by Mr Lauwers and we will respond to any questions at the end.

Mr Lauwers: I am going to be referring to this goldenrod brief that you have in front of you. The logic of the principles that Mr Reilly has just outlined should, in our submission, be given full force in the legislation. So our technical review of Bill 64 has been guided by those principles. We have identified seven or eight areas of concern with examples to illustrate our problems and we would like to go through them in order.

Before I do that, though, there is another or third principle underlying the two of which Mr Reilly spoke and this brief; that is, that in our view points of potential dispute between public and separate boards ought to be removed at this stage, if at all possible, so they do not crop up later.

The first area of concern that we have is with public corporations. Now, as you are aware from the briefing yesterday, the mechanism for equitably sharing assessment is the pool. We agree that assessment of public corporations should be in the pool. Bill 64, appears to create a gap or have a gap in it, where such assessment is in fact lost to the pool and that is in the area of partnerships.

The bill, as it now operates, seems to us to work this way. The proportion of assessment of a public corporation in a partnership is not pooled. The example I would like to refer you to is on page five of the brief. We pause at this example for you. John Smith, a Roman Catholic, and Acme Corp, a public corporation, form a partnership for the development of land previously owned by John Smith. You will appreciate this is not an unusual example. Each is a 50 per cent partner. Under section 126, John Smith can direct his 50 per cent of the assessment of the

partnership property to the separate board because he is a Roman Catholic.

Acme Corp's share is not affected by section 126 because that section does not apply to a public corporation. It also does not fall into the pool under section 126a because that section does not apply to partnerships. So in the example I have given you here, Acme Corp's share would not go into the pool even though it is a public corporation. The result, in our view, is even more striking where, as sometimes happens, both partners are public corporations. All of the assessment would miss the pool. So the suggestion we have for amendments, at the bottom of page five, is designed using the language or the style of the rest of the bill to accomplish the goal of directing that proportion of a public corporation's assessment in a partnership into the pool.

The second area we would like to address starts at page 6 and the title is, "The Requirement for Direct Ownership." The problem is set out under the title. Subsection 126(5) uses the phrases, "the number of shares held by Roman Catholics," and "the interest of partners who are Roman Catholic..."

The problem is set out under the title. Subsection 126(5) uses the phrases "the number of shares held by Roman Catholics" and "the interest of partners who are Roman Catholics." Both of these phrases imply that the shares must be held directly and personally by a Roman Catholic on the one hand or that the partner must himself be a Roman Catholic on the other hand.

The effect of this implication is that the assessment of a corporation whose shares are held by another corporation, a typical parent-subsidiary relationship, would never be directed to the separate school system because a corporation cannot itself be Roman Catholic.

For corporations the problem has been cleared up by the case, referred to on page 7 of the brief, called the Foodcorp case. In that instance, the Ontario Municipal Board, supported by the Divisional Court, permitted the parent to direct the assessment of a subsidiary in a private corporation situation.

I will tell you my firm acted on this particular case and I am not as persuaded by the outcome as I would like to be. In any event, the case does not apply to partnerships so there is here a source of uncertainty and potential strife which, in our view, ought to be eliminated if at all possible.

It can be simply and easily by the insertion of three little words in the subsection, and you will find them on the top of page 8. In subsection 126(5), if the words "directly or indirectly" are

inserted where underlined there, the problem I have just referred to would be eliminated. Unfortunately, in clause (b) the three words cannot quite be so easily inserted, so a couple of other words have to be adjusted, but the concept is precisely the same.

I want to now turn to the third area of concern that we have, on page 8, and that is, "Nonshare Capital Corporations." Again, the problem that we are concerned with here is addressed after the title. An additional difficulty arises because the proportional limitation in subsection 126(5) may imply that only corporations having share capital are entitled to designate assessment.

There are many nonshare capital corporations which are nonprofit and which carry on public and quasi-public functions. If the implication that only corporations having share capital may designate assessment is correct, then none of the assessment of those corporations could be directed to the separate system.

I suggest to you that this is not an academic problem because a little later I will bring you to a letter from an assessment commissioner which identifies precisely this problem. At least one assessment commissioner we are aware of takes the position to which I have just referred you. So the problem has to be cleared up and it should be cleared up now. There are a number of examples starting on page 9.

The first example is the Archdiocese of Toronto, which is a nonshare capital corporation. It owns 200 or more rectories, one for each parish. Those are all assessed for residential purposes. All of that assessment is now directed to the support of the separate system, and in our view that is appropriate. It should be.

At the same time, let me hasten to point out that we do not expect any support from rectories of other denominations; for example, the Anglican Diocese of Toronto. We think that none of that should go to the separate system.

The second example we have is an office building operated by the Archdiocese of Toronto next to St Michael's Cathedral. Portions of that building are leased out. I have referred to two of the tenants here. One is the Catholic Education Foundation of Ontario, a nonshare capital charitable corporation. It pays assessment. That assessment is directed to the separate system. Again, that is appropriate.

The next example is the Catholic Truth Society, a nonshare capital corporation which runs a book store in the basement of the building. It also pays assessment and that goes to the separate system.

Our position on those is set out at the top of page 10. We believe that the assessment of denominationally based nonshare capital corporations, such as CEFO and the Catholic Truth Society, is appropriately directed to the separate school system. At the same time, we think that similar organizations affiliated with other denominations should have none of their assessment directed to the separate school system.

I want to move if I may now to a secular example, and that is the Ontario Teachers' Federation, which is a nonshare capital corporation incorporated by statute. Of the revenue of that corporation, 25 per cent is derived through the contributions of separate school teachers. None of the assessment of OTF goes to the separate system on the leased property that it has on Bay Street in Toronto. As you can see from our submission, at least that proportion which comes from the separate school system ought to be directed back to it, in our view.

The next example is an organization of which I am a member, the Law Society of Upper Canada, also a nonshare capital corporation. It leases space at 481 University Avenue to run the legal aid program. All of that assessment goes to the public system. Our position on that is set out on page 10 again.

COSS believes that the assessment of corporations which serve the public interests of Catholics and non-Catholics alike ought to be apportioned in an equitable fashion between the school systems. Our suggestion on that is very simple: nonshare capital corporations ought to be permitted to designate a portion of their assessment to the separate system on a voluntary basis.

We suggest that corporations of that sort carrying on public and quasi-public functions can be expected to behave responsibly in the direction of assessment. Since there are so many different situations to be covered, it would make sense to give them the flexibility.

On page 11, that can be accomplished with a very small insertion. The words that are key in the insertion are "with or without share capital." If the words "with or without share capital" are included, any concern about the ability of nonshare capital corporations to designate assessment would disappear. The limitation on share corporations which is in subsection 126(5) would not apply. That would mean that nonshare capital corporations could use their best judgement on how they wanted to distribute their share of the assessment between the separate boards and the public boards.

The next area I want to explore is, "Municipal Corporations and Other Governmental Bodies." The problem that we refer to is directly under the title on page 11.

Municipal property is exempt from assessment under section 3 of the Assessment Act. However, space leased by municipalities from private land owners is assessable.

The first example is office space rented by the municipality of Metropolitan Toronto on Bay Street. None of that assessment goes to the separate system.

The next example is the only one of which we are aware in which an assessment commissioner has taken a position on this issue. I will read it to you.

For a time, the city of Kanata has divided the assessment it pays on leased space between the separate and public systems in the regional municipality of Ottawa-Carleton. The Carleton Roman Catholic Separate School Board approached the city of Gloucester for a similar arrangement. The opinion of the regional assessment commissioner was sought and without going into great detail, I will leave it to you to read. The bottom line is the last paragraph in the block print on page 12:

"This office will therefore continue to show the city of Gloucester on the assessment roll as a public school supporter. Further the same application of school support will apply in the city of Kanata as it was previously incorrectly apportioned in part to your board."

In effect, the assessment commissioner says that for legal reasons all of the assessment attributable to municipal corporations should go to the public board.

The next example involves this province. It is much the same way as with municipalities. Land and property belonging to the province are exempt from assessment under section 3 of the Assessment Act but it does not apply to leased space. The Ministry of Government Services, for example, leases space at 77 Bloor Street West in Toronto and that assessment all goes to the public system. It is not apportioned.

Our position on that is set out at the bottom of page 12. We believe that the assessment payable by municipal corporations, the province of Ontario and other governmental bodies should be apportioned in an equitable fashion between the public and separate systems. We also believe that the matter of apportionment should not be a political issue to be debated by municipal councils and other political bodies. In effect, we are recommending that this assessment go into

the pool. The amendment we suggest at the top of page 13 would accomplish that.

The next issue I would like to explore is on page 13 under title 5, "Who Has the Right to Designate?"

Without going into great detail on this, and recognizing the time limits, in our view and consistent with the first principle that Mr Reilly explained today, the individual should be the one who has the right to designate. That is recognized, I should add, by the compendium in the policy directions given by the ministry. The problem is that subsection 126(1b) of Bill 64 appears to give it not to individuals but to corporations and partnerships. In effect, the majority can override the minority.

We suggest that can be avoided and should be avoided by giving Roman Catholics the right to require their corporations and partnerships to carry out the appropriate calculations and to make the designation where they so wish. The amendment to accomplish that is set out at the top of page 14 of the brief.

The next area is the effect of errors in the notice of designation. In a nutshell, the problem is this: If the notice of designation sent by a partnership or a corporation overstates Roman Catholic support, even by a little bit, all that year's assessment is lost because the notice becomes void and it cannot be corrected. That, in our view, is a draconian result. In fact, it creates an incentive to appeal notices of designation, because there is so much at stake. It is also inconsistent, we submit, with the normal role of the Assessment Review Board, which is to correct errors. We believe that in the case of a faulty notice of designation, the Assessment Review Board should be empowered to correct the error.

1550

Our recommendations are at the top of page 15. To accomplish that requires the deletion of part of subsection 126(6), that part of those subsections that in effect void the notice if it is slightly wrong. Then for greater certainty we recommend a small change to the Assessment Act as well.

The last point we deal with in this brief is the omission of certain business vehicles. I am sure you are aware from your experience that trusts are used as vehicles for holding and developing land. They have been left out of the bill. Because it is such a common form of holding and developing land, we believe trusts should be dealt with in the bill. We suggest here on pages 15 and 16 that they are conceptually the same as

partnerships in the way they should be treated and therefore they should be treated the same way as partnerships. The suggestions we have there for amendments are set out on page 16.

Although this has been fast and there is a fair amount of stuff to cover, and you will have the brief to read if you wish, I hope we have persuaded you to consider and make the modest changes we suggest. They will improve the bill, make it more consistent with the principles on which the bill is based and also make it easier to administer. I would like to suggest to you also, with some diffidence, that the changes we suggest here today are necessary, and if they are not made now, they will need to be made later.

If I may, I would just like to refer you back to page 2 of the brief. What you see in block print there are the words of the Honourable George W. Ross in 1886, explaining the intention behind the sections you are now considering amending. That was more than a century ago. In the relatively simpler times of the 1880s, he could not have known that his legislation was not going to work, but in fact it did not and that is in part why we are here today. We have tried to point out to you some of the pitfalls in the draft legislation that is before you and, hopefully, some simple and constructive solutions, and we hope you adopt them.

Mr Reilly has a little bit to say.

The Chair: Oh, is he going to sum up?

Mr T. Reilly: It is simply personal choice, where possible, and where it is not possible, equitable sharing. This is the consensus of the separate school community, it represents everybody and we are open to your questions.

The Chair: Thank you very much for taking us back in history and for giving us a very detailed brief which seems to bring your points very succinctly to a focus. Are there any questions?

Mr Keyes: Not a question, but I just want to say that they are so highly technical in nature, and having just received them, I would not begin to attempt to comment upon them until we hear from our ministry officials. I do not expect they necessarily will want to comment upon them, but they appreciate the technical detail that has been presented to us so that it can be considered by the ministry as we look at potential amendments to this act.

The Chair: I would suggest that, although they are very technical, they have presented quite clearly and with good examples and that is very helpful to us.

Mr R. F. Johnston: I think so too. Even for those of us who have difficulty comprehending this sort of thing, I think it has been very well presented.

I wonder if the parliamentary assistant can explain to me, as I do not know much about these kinds of things, why the trusts were not included. That was not in the briefing information. I am wondering if you have any information on that.

Mr Keyes: I defer to Mr Lenglet or Mr Riley on this one.

The Chair: Mr Riley, is there a reason?

Mr Keyes: Maybe between the two of them they can decide legally here. Mr Riley is the solicitor.

Mr M. Riley: I am not sure I can answer much on that, other than to say that we did not have instructions to put them in. That certainly does not start to answer your question, but it simply was not within the scope of the mandate, the policy initiative that we worked from. I do not think we were ignorant in any way of the importance of it as a vehicle for land development and its many other commercial and business usages, it simply did not form part of the initiative that I was given a mandate to legislate about.

Mr R. F. Johnston: Do you have any idea what the financial impact would be of this kind of a change?

Mr M. Riley: I do not know.

Mr T. Reilly: Coming from the region of Peel, I know that these exist in great numbers and a great deal of land and holdings are involved.

Mr R. F. Johnston: So this would make a substantial difference, one would presume, to the dollar compensation package that has been discussed by the government up to this point.

The Chair: Mr Lenglet, did you have anything for us?

Mr Lenglet: I think in defining the dollar impact we at no time had any knowledge of the amount of public corporate or business assessment anyway and in fact what we did was try to estimate a total amount that might shift. We did that by assuming that the result of the process would be that the commercial assessment would split on a basis similar to the residential, which implies to me that any other commercial vehicles that might exist beyond those that are defined would have been included. In other words, it was just an assumption about what the role might look like after the process had been completed, rather

than saying there was this much of this kind and this much of that kind.

As to the question of why the trusts were not there, in putting together the original initiative much of the material that was contained in that was the result of meetings that I was not a party to but involved discussions that involved representatives from the completion office and the Ontario Public Education Network. The issues that they discussed did not specify things such as trusts and the various other vehicles. We took what seemed to be discussed at that meeting and put that into an instruction to legislative counsel to put it in; to give form to that.

Mr R. F. Johnston: The other thing is the concerns about some of the groups that we would be left out, like the archdiocese, suboffices, if I can put it that way, and other groups. Those all seem to make sense. Are the proposed amendments along those lines? Are there difficulties with those that we should know about?

Mr Lenglet: I cannot comment on any difficulties at this time. Those would appear to be things that, again, were not part of the discussions that we had in putting together the original proposal, but that does not say that they are not reasonable suggestions that have been put forward.

Mr R. F. Johnston: They seem to be common sense, though, to me.

The Chair: You may want to do something about those in the House then.

Mr R. F. Johnston: We may very well.

What sort of information can we receive from the ministry about the trusts in the next day or so that will give us a better idea of what we are dealing with here?

Mr Lenglet: I think again, to reiterate what I said yesterday, we at no time have had any information on the amount of any kind of commercial holdings on the assessment roll. Those are things that in the past have not been identified and we have no capacity to identify them at this time.

Mr R. F. Johnston: What about the concept, though, that those kinds of holdings through trust should also be part of the partitioning of assessment? It would be very helpful to us to get some response to this kind of suggestion from the ministry at some point so we have an idea of what the ministry thinks about this.

Mr Keyes: Possibly they may not want to make that comment today since it has just been presented, but I will take it upon myself to see that that is brought back to us in our meetings of

next week. I believe we are meeting Monday and Tuesday?

The Chair: Yes, we start clause-by-clause on Tuesday. Mr Reilly, do you want to close?

Mr T. Reilly: Simply, in answer to that, the original consultations that took place were really conducted by people who were quite amateurish in this. To me, a trust was a private thing. At that time, if someone had mentioned the word "trust," land holdings would not really have entered my head. So I think those were very rough and global, Richard, and I think they have now been refined more and more. The original calculations were—

Interjection.

Mr Keyes: Lawyers got involved.

Mr T. Reilly: Well, that is true.

Mr R. F. Johnston: Dangerous thing at the best of times.

Mr T. Reilly: Our education has taken place.

The Chair: Very short, Mrs Cunningham.

Mrs Cunningham: I just want to pursue it. When you talk about the trust as a business vehicle, give me an example.

1600

Mr T. Reilly: Land holdings in areas such as Peel. They will form a trust of corporations and they hold these lands in common for future development. That would be one. There may be others.

Mr Lauwers: The land is often held in trust for undisclosed beneficiaries for a certain period of time while it is undergoing development. Ultimately, it is sold.

Mrs Cunningham: Are you suggesting there are no taxes paid at that time on that property and that is why it is not part of the regional assessment—

Mr Lauwers: No, there is assessment paid on the property, of course.

Mrs Cunningham: Assessment.

Mr Lauwers: Of course.

Mrs Cunningham: Okay, how is that different from property that is held in trust by an individual who may donate his land to the municipality or to the church or whatever? Is there tax paid on that as well?

Mr Lauwers: There is assessment paid on all property.

Mrs Cunningham: And on property owned by public institutions and churches as well?

Mr Lauwers: There are some exemptions, and you will see them in our brief, but essentially that is the rule, yes.

Mrs Cunningham: So you are looking for the ones where taxes are now paid but not extending it beyond that?

Mr Lauwers: That is correct.

The Chair: Thank you both very much. You certainly have engendered some new thinking here.

The Scarborough Board of Education, Mrs Helena Nielsen, please. I would ask you to try to keep this presentation within 15 minutes. I am trying to give each person five minutes less in order that the person who is on last on the agenda today will not miss out simply because we have to go for a vote.

SCARBOROUGH BOARD OF EDUCATION

Mrs Nielsen: Appreciating that, perhaps we can start. First of all, good afternoon. As you have stated, I am Helena Nielsen, the vice-chairman of the board, and I am here on behalf of our chairman, Dianne Williams, and my colleagues on the board. With me this afternoon is Don Mason, our superintendent of finance. With his assistance, we will be able to answer any questions that you may have at the conclusion of the presentation. Thank you very much for the opportunity to bring the views of the Scarborough Board of Education before this committee.

I would like to express today our tremendous concern about the impact of Bill 64 and Bill 65 on the public school system in Metropolitan Toronto. As you may be aware, our board has in the past strongly opposed the concept of pooling commercial and industrial assessment with the separate school system and has made presentations to the Ministry of Education to express this view. Since the initial announcement of the proposed legislation in May 1989, we can only become more concerned that the pooling concept, as identified in Bill 64, will create an extra tax burden to the Scarborough ratepayers.

The government promised that no public school board would suffer a loss of revenue in 1990. However, we, as a member of the Metropolitan Toronto School Board, calculate a loss of 8.4 per cent of our total assessment.

We believe that a substantial financial crisis is looming for our school system. We are not confident that all of the taxes lost to the separate school system will be made up by the province, in spite of the promise made by your government that no school board will suffer a net loss from this legislation. We believe it is inappropriate for public funding to be diminished from the public school taxpayer to support the separate school system.

As you are aware, the data used to calculate the impact on school boards is out of date and the final costing of pooling will not be known for several months. When the data is revised for 1989 and the final compensation is determined, we are concerned that any growth in assessment will negatively affect the guaranteed amount now and in the future. Our ratepayers do not like financial surprises of this magnitude and will reject a further shift of the educational burden on to their tax bills.

We have been self-sufficient in Metro for 1989, and we are willing to carry our local share of the educational costs, even to the extent of paying fully for the initiatives mandated by the provincial government. In fact, there was no grant from the province to us in 1989 other than some capital support for Scarborough's new schools, for which we are most grateful. When we met with the Minister of Education and the Scarborough members of the Legislature in March 1989, we accepted the responsibility for implementing new provincial programs, but only on the understanding that our funding base would remain intact.

We are concerned that our school system will have to cut back on its current programs in order to pay for the operating expenses of the separate school system. The province must accept the financial responsibility of adequately funding schools in the province, but not by sacrificing the tax base of the public school system. The public school system requires a Metro-wide tax base because it is open to every student in our jurisdiction, regardless of race, creed and religion.

We urge the province to reconsider the shift of commercial and industrial assessment away from our schools to the separate school system. Our challenge in Scarborough is to provide the best possible learning experience to our diverse student population and we will not be able to do this effectively if our assessment base is further eroded. Surely the province can find the financial resources within its jurisdiction and not impinge upon the traditional local school board funding process. We are more than ready and willing to accept our responsibility for education in Scarborough and we expect the province to be a willing partner in this essential service in the life of our Scarborough community.

We would remind the government of its promises expressed on 18 May 1989 by the former Minister of Education, Chris Ward:

"Public boards of education have always had a mandate to provide the best-quality education for

all children in this province. They have done this effectively over many generations and I believe the changes we put forward today will ensure they continue to do so with adequate local resources, since in no case will a public board experience a net loss in revenue."

That promise was repeated by Minister of Education Sean Conway on 7 November 1989:

"The government has said that no board will suffer a net loss of revenue as a result of this policy. I am going to stand behind that commitment. I understand the concern of the public boards out there and that is a legitimate concern."

If this government is determined to pass Bill 64, we would demand that the public school boards have legislative protection so that individual boards such as Scarborough will not suffer a loss of revenue due to this legislation. We ask that the government of Ontario place its verbal promises in this legislation.

I would like to thank you again for allowing the Scarborough board to address you today.

The Chair: Thank you for presenting to us so clearly, Mrs Nielsen. I understand Mr Johnston has a question.

Mr R. F. Johnston: I would like to have some understanding about how you projected your 8.4 per cent loss of total assessment. I have seen many breakdowns of each of the Metro boards, but it is higher than projections I saw earlier on. I wonder if you could take us through how you came up with that projection off the old figures.

Mr Mason: I am sorry, I cannot. We took it from a Metro document. I can certainly get a copy of that document and provide it to the clerk.

The Chair: Mr Mason, is 8.4 per cent for the Scarborough board or an average for Metro?

Mr Mason: It would be the Metro board. Off the top of my head, I think it is probably low. I am not sure what Mr Johnston is referring to, but I will try to find out and provide it to the clerk.

Mr R. F. Johnston: When some of the initial discussions had taken place around what the impact of localized pooling would be, the discussion was something in the neighbourhood of three to four per cent off major areas like Metro, and maybe up to seven per cent or eight per cent, but I had not heard 8.4 per cent, so I was interested in knowing how you had arrived at that figure.

Have you had a chance in the last day or so to watch on television any of the presentations and know about some of the other positions that have been put forward?

Mrs Nielsen: Unfortunately, I have not had the opportunity of tuning into my television set. I was—

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Mr R. F. Johnston: Are you aware that the Ontario Public School Board Association, of which you are a member, made some specific recommendations around the concern about the net loss side of things for the public board in terms of amendments to subsection 126a(1), etc? Are you aware of those recommendations?

Mrs Nielsen: We have received their brief.

Mr R. F. Johnston: You did not say specifically how you thought this should be addressed. I wonder if you have any comments about the alternatives they have brought forward to deal with this concern.

Mrs Nielsen: To be perfectly honest, Mr Johnston, the Scarborough board has not examined that document. We have received it. It is not in keeping with our concerns in Scarborough. Our concerns in Scarborough are not perhaps as specific as the OPSBA's. They have many boards that they need to address in terms of this issue. Scarborough's position is that, because we are a part of the municipality of Metropolitan Toronto family, we are rather unique, even within OPSBA.

Our concerns are that, although we are paying for the education right now and we are quite prepared to continue to do that, we must have the resources we have now in order to continue to provide those programs. We cannot afford to have that eroded in any way. That makes us a little unique in terms of the other boards in Ontario.

Mr R. F. Johnston: I would like to give another perspective to you. There are two other alternatives. First, they would adapt the sections. Section 30 would be amended by "providing for a notional assessment base for each public school board to be adjusted annually and an undertaking by the province to make good the shortfall between revenues actually generated and the revenues that would have been generated under the notional adjusted assessment base." That was one of their alternatives. Does that have your board's support?

Mrs Nielsen: Not having examined them—Mr Mason, perhaps you are aware of the possible impact of that.

Mr Mason: I think that is what the board makes reference to when it would like to have it guaranteed. I think what Mrs Nielsen is saying is that the board really says, "We will do the best

job we can, but we want to keep our resources and we would sooner have those resources rather than be at the—not whim, but the blessing of the Legislature."

Mrs Nielsen: If it has to be legislated, then, as I indicated in the latter part of my presentation, we certainly would like to have some guarantees.

Mr R. F. Johnston: If you have any further comment on their approach to guarantees, we would be pleased to hear from you, because that is going to be a recurring theme from public boards. The approach of it is something we are going to want to hear more about.

Mrs Nielsen: Perhaps in Metro you might be hearing that we would prefer not to have it happen and then the second position would be looking at some guarantees.

The Chair: Thank you very much for your presentation. I do not believe there are any more questions.

Mrs Nielsen: I tried to be brief.

The Chair: Mr Keyes, would you like to ask a small question?

Mr Keyes: I was wondering if you had looked at the other issues that the legislation addresses. You seem to touch mainly on looking for legislative protection to be sure that there is no net loss of revenue. Do you wish to comment or did you study at all the other aspect of whether you believe the system is fair at the moment in distribution when we look at such things as utility and telegraph revenues, which have apparently gone only to the municipality and the public board? It may be unfair because you do not address it in here, but in your discussions have you looked at it?

What we are attempting to do, as the minister has said, is to provide equity in funding, so we are trying to look at all the areas where, in our opinion, equity has not existed. Have you looked at that? There are really two areas. One was on public corporations and partnerships. I thought I would just take it to a clearer one and that is the revenue of utilities, telegraph, etc.

The Chair: Did you want to answer?

Mr Mason: I certainly understand the question. The point has been made. I think the board's position has been that it wants what has been its own and it wishes to keep what has been its own and to do the best it can with it.

The Chair: Thank you both very much for coming and presenting your case so succinctly.

May I have the Board of Education for the City of Hamilton, please? Just as you are approach-

ing, I am asking for your consideration. As members of the House, we have to return at 5:45 for a vote, so we are asking each person to take five minutes off their presentation. I do not know whether that will make any difference in the way you are going to present, but we are asking you to give us 15 minutes instead of 20.

Mrs Clarke: I believe we will be within that time line.

The Chair: Thank you very much. So you are Mrs Caye?

Mrs Clarke: Mary Caye Clarke.

The Chair: Sorry, Mary Caye Clarke, and Mr Rielly and Mr Shewfelt.

Mrs Clarke: Mr Rielly is director of the board. Mr Shewfelt is the treasurer and business administrator of the Hamilton board.

The Chair: I am sorry, Mary Caye. I have met you before and I am very sorry that I did not recognize you immediately.

Mrs Clarke: I understand, Madam Chair.

The Chair: Please begin. This seems to be a rather long brief, at seven pages. The Scarborough board has just been through five pages and seems to have done it very well. You may want to summarize one or two of the pages.

Interjection.

The Chair: We can hardly do that, Mr Keyes, we only had two questions the last time.

Mr R. F. Johnston: The chair's preamble is sure taking up a lot of time.

The Chair: That is right. Let's get started, Mary Caye.

HAMILTON BOARD OF EDUCATION

Mrs Clarke: As chairman of the board of trustees for the Hamilton Board of Education, I would like to express my appreciation for the opportunity to appear in front of you today concerning the financial implications with the implementation of Bill 64.

I have introduced you to the people who are with me, the staff people, Mr Rielly and Mr Shewfelt. We would like to encourage any questions that you have and we would wish to give them complete and accurate responses. For that reason, we have staff people here as well as myself.

Historically, it has been our practice to work with the provincial level with associations such as the Ontario Public School Boards' Association, the Ontario Public Education Network and the Ontario Association of School Business Officials. With the passing of the second reading

of this bill on 8 November, we felt compelled to present our reaction directly to the government because we are one of the boards in Ontario that will encounter a significant negative impact.

We shall address our concerns regarding the direct impact as it relates to the sharing of commercial and industrial assessment with our coterminous board. It is not our intent at this time to address other critical issues, such as the Development Charges Act, the implications of Bill 30 and its impact on our capital financing program, the provincial ceilings and so on.

Our specific concerns relate to a financial model that could be implemented within five weeks. Should that be the case, the legislation will have a negative and serious impact on our local ratepayers, not only during but also after implementation.

When the Ministry of Education issued a news release in May, we accepted the comments that the plan would create a fairer and more equitable system for the distribution of education revenues, that changes would be implemented in such a manner that no public board would incur a loss in revenue, that the changes would not adversely affect the public school system and that amendments would be introduced to the Education Act to provide a more equitable sharing of education revenues at the municipal level.

Our position is that the proposed model for pooling and sharing of the industrial and commercial assessment base by our two publicly funded educational systems cannot be implemented if it jeopardizes the funding resources of the Hamilton Board of Education. We believe that we demonstrate prudent financial management, and therefore it is paramount that we maintain the integrity of our resources. This is the reason for our concern.

We must maintain our resources. It is important, with the expectations that are in front of us, and those expectations are listed in front of you: reduction in class size; a microcomputer plan we have in place; technological studies that we have in place; junior and all-day senior kindergarten programs that we are looking at into the future; pay equity legislation; health and safety; special needs of inner-city schools, which is very important to our public board; race relations initiatives; capital projects; and asbestos control, which is important in the city of Hamilton at this point in time.

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I wish now to focus on the ministry's financial model that could be implemented within five weeks. I would like to comment on the ministry's

impact study as it relates to the Hamilton board, the details of which are outlined for you in exhibits 1 and 2.

Each year during the six-year implementation phase, \$2.3 million in property taxes will be reallocated to our sister board. This loss in tax revenue will be offset by \$1.3 million in provincial grants, thereby resulting in a \$1-million loss of revenue to our board. During this period, your government will supplement our operating grants by \$600,000, thereby reducing our net loss of revenue to \$400,000 per year. It is our understanding that additional grants may be available to boards such as ours to compensate for this loss during the implementation phase. Since this information was not incorporated into the model, we have to assume that those grants would offset the \$400,000 loss.

While this is of concern to us in not only the maintenance of our existing programs and obligations but also the implementation of new programs, we have an even greater concern with the impact of this legislation as it relates to the seventh and subsequent years. Our interpretation of the model would indicate that the withdrawal of any pending supplementary grants would leave us in a net loss position of \$2.4 million per year.

In the short term, we assume that the minister will fulfil his promise that he made during the first reading of Bill 64 on 19 October, when he stated:

"Provincial grants to school boards will be increased to ensure that the public school system, on a province-wide basis, does not suffer a loss of revenue.... As well, additional compensation will be provided that no public school board will experience a net loss of revenue as a result of these changes."

During the second reading of the bill on 8 November, the minister went on to say:

"We have said we are going to take a number of compensatory measures to recognize that there will be impacts. As a result of this policy, we will be increasing the grant ceilings in a way that is going to leave a vast majority of public boards better off, by my calculation, than they were before this change was undertaken.

"Yes, if after that we find there are boards that have additional considerations, they too will be taken into serious and positive account. Without seeing the return of the rolls, I cannot at this point give the absolute final numbers because I do not know what they are, but we do know that the government has said no board will suffer a net loss of revenue as a result of this policy."

We share the same concern with respect to the funding model which is planned for implementation in five weeks. We too wish to see the final numbers based upon the return of the final assessment rolls. It will be March of 1990 before the rolls are available to us. This would be two or three months following the pending implementation of this legislation.

In the May 1989 news release by the minister, it was stated:

"These changes bring to a conclusion the last outstanding issue relative to the decision of this government to provide equality of opportunity for every child in this province, regardless of whether they are enrolled in the public or separate school system. It allows every child the opportunity to reach his or her full potential in an atmosphere of certainty and harmony."

We feel very vulnerable. If this bill is enacted, either we may have to reduce our current operations by \$400,000 each year over the next six years, for a total of \$2.4 million, or your government will have to increase our grants accordingly. If neither of these options is feasible, we will have to levy this financial shortfall on the local taxpayer.

It is imperative that we at least maintain a level of funding that recognizes our fiscal needs, many of which are implemented by ministry mandate and special initiatives in addition to any local initiatives that we might take. It is paramount to our mission statement that we maintain a secure and dependable funding base for the future to ensure properly planned programs and support services for all of our students. There can be no erosion of our overall financial resources or negative impact on the viability of our educational system.

We therefore recommend that third reading of Bill 64 be delayed until the 1990 assessment rolls are received and the 1990 estimates approved. This would put us in a position to work with the minister in a collaborative way to evaluate the information and develop a model that would not negatively impact on the operation of any publicly funded board during a phase-in period, or more important, in the years that follow that.

Our request for reconsideration at the provincial and local level is based upon the fundamental principles of equality, fairness, participation and accountability.

On behalf of the Hamilton Board of Education, I would like to express my appreciation to you and to your committee for providing us with this opportunity. We would be most pleased to answer any questions. It is personally a delight

for me to have an opportunity to see you at work in education, as we worked together quite a while ago in that area. I am delighted that you have carried on the interest.

The Chair: Thank you very much for the compliment.

Mr Allen: I would like first of all to compliment the Hamilton board, which always comes with a reasonable and well-evaluated statement when it comes before us. I would also like to welcome the current chair of the Hamilton board, who I do not think has come before this committee, at least not in any time that I have sat on it, although I think most of the other members here have at one time or another, if I am not mistaken, although Mr Rielly was not the director in previous appearances. I would like to personally compliment him on the new role that he plays.

Could I ask a couple of general questions? First of all, was the board essentially satisfied with the overall impact studies that the ministry prepared with respect to the ways in which this proposal would impact on each board across the province, yours in particular? Given the fact that those figures are of course based on what are now dated statistics and will have to be updated, but with respect to the methodology and the overall results in that sense, are these estimates acceptable from the Hamilton board's point of view in general?

Mrs Clarke: Mr Shewfelt, I will turn that to you, if I may.

Mr Shewfelt: I am not exactly sure of the intent of the question. What we are attempting to point out is that we feel that, given the model and the conditions behind that model, no, we are not satisfied. There is a fair gap in uncertainty in terms of any funds being built into the ceilings beyond \$165 million. In our particular case too, we feel there is an uncertainty between the Minister of Education (Mr Conway) and the Treasurer (Mr R. F. Nixon), because we are dealing with different figures, \$180 million versus \$204 million. It is that degree of uncertainty that makes it very difficult in our case to evaluate with a great deal of objectivity the impact study or model that was placed before us.

Mr Allen: The second question has to do more with the funding mechanism itself for the system as a whole and the way in which the various equalization factors play in as you have more or less assessment.

Yesterday, when I asked a question of the ministry representatives, I believe they indicated

that the way in which the present equalization and adjustment factors play in, given the purposes they serve, 13 boards across the province have found themselves with somewhat smaller overall grant levels as a result than the balance of the boards.

Is it your sense that the problem lies essentially with that funding mechanism? Given the objectives of equalization adjustment and the elements of fairness that are built into that, is there a way, without concocting additional single lump sum grant payments to boards, to deal with the problem in a normal formula fashion? I am not sure I am making myself clear, but do you see the drift?

Obviously, one solution is to take the 13 boards and dump some money in their laps. The other is to take the formula and find a way of adjusting it so that it does end up with a fair result and a no-loss situation for all the boards. Is the latter tactic one that is workable from your point of view?

1630

Mr Shewfelt: Short of a complete rewrite of the grant system, I believe the basic appeal here is to introduce a level of certainty by an influx of more money into the ceilings where we could perceive that money to be protected, and thereby not put us in any way, shape or form in a negative position. Given that position of equality, I think we might then wish to enter into debate on the entire funding system itself. At this point—I would draw your attention, if you have our brief, to the last page—it is a matter of providing us with that guarantee where we come at least equal to, if not above the line.

Mr Tatham: On page 4 you talk about a \$400,000 loss. If you make that loss up, would that keep everybody happy? Would that make the playing field level every year?

Mr Shewfelt: Given the existing circumstances, if that were built into the ceilings and brought us, on the last page of this presentation, up to a zero break-even point where we had the guarantees that we have today, yes.

The Chair: I would like to ask Mr Lenglet about the fact that there was one date that was brought forward in the presentation of Mrs Clarke regarding the assessment rolls being ready by March 1990. I thought you had given us a much earlier date yesterday. Am I correct?

Mr Lenglet: That is correct. I understand the assessment rolls will be returned on 26 January. I would assume from this that information on

assessment totals for the boards will be available about a week following that.

The Chair: I thought that information might be useful to you. Mr Shewfelt, did you want to respond briefly?

Mr Shewfelt: Yes. We have been informed locally by the commissioner that our date reflects a 35-day appeal period to the basic rolls that come out. In all candour with your committee, to be fair, I do not expect that there would be any significant impact on appeals, but we would still like the period of 35 days in order to evaluate the basis of this model that is very critical to us.

Mrs Cunningham: My question has to do with the time frame as well, given that school boards have always wanted to have their grants at the beginning of their own school year, which is the real issue. Managing money for kids who appear on the first day of September, this seems to make it even more difficult.

I guess I am looking at the impact of your exhibit 1 on the last page here. What will this really mean to you in this year's budget if you are looking at the annual impact? What do you say you are going to lose this year? Is this over \$1 million in grants? Is that what you are saying, given your information now?

Mr Shewfelt: What we are saying is that based on the model, if I understand your question, in 1990, as we interpret the legislation, minutes and so on, we would experience a real \$400,000 loss in revenues.

Mrs Cunningham: In grant revenues?

Mr Shewfelt: Yes, and that that would accumulate for each of the succeeding five years.

Mr R. F. Johnston: Given that the government has indicated it wants this before Christmas and has basically instructed our House leaders that this will be the case, and that this is why we are holding hearings now rather than in January which would fit your timetable better, the reality is that this is going to be put through before Christmas, 94 red Liberals notwithstanding.

Therefore, I wonder if you could tell me what you thought of the Ontario Public School Boards' Association recommendations to put in amendments of guarantee for the dollars at this point? It does not seem directly to address your concern that in the seventh year the gap of compensation may not be part of the grant ceiling. At least as I read them, I am not sure it does. Have you any comment on that as members of the association?

Mrs Clarke: Mr Shewfelt, would you like to address the financial part of that?

Mr Shewfelt: I only received a copy of OPSBA's brief just literally on the way down here so I have not had a real opportunity to look at it, although I took a very quick look at it. We certainly endorse, and I imagine the board would as well, what is being said in the OPSBA one. In case there is any misunderstanding about what we are suggesting here, we are asking for guarantees for each year during the six-year implementation period which will give us the flat line in the seventh and succeeding years. I believe we are following the same strategy as OPSBA.

Mr Allen: My question really takes off from Mr Johnston's, which was the question I wanted to follow up with in any case if I had had another opportunity. A proposal of the Ontario Public School Boards' Association in its brief was recommendation 7(a), "providing for a notional assessment base for each public school board to be adjusted annually and an undertaking by the province to make good the shortfall between revenues actually generated and the revenues that would have been generated under the notional adjusted assessment base." I wonder if a representative from the ministry might perhaps tell us whether those notional assessment elements would be built in so that at the end of this period of time the base would leave the board without any shortfall in grant.

Mr Lenglet: I am sorry but I do not have that brief with me at this time. Certainly, our intention at this time was to look at the assessment base as it would be returned for 1990 and look at the revenue loss associated with that after the grants had played in and after the additional money had been put in, and look at that as the amount we were guaranteeing. The notional assessment base is not an idea I have usually heard referred to and I am not certain exactly what it means. I do not have any comment on it at this time. Again, I already have an undertaking to look at one of those recommendations for next week and we could add that to the letter we will be preparing in terms of how we would react to that.

Mr Allen: Perhaps I could put it another way. If the ministry lives up to what it verbally has committed itself to, it appears that come the end of the sixth year there will have been phased in, one way or another, sufficient revenues to maintain not just the level of expenditure of the board in question, but also to have impacted in such a way on the funding base so that it would go on at the same level of income that it would have received at the end of the sixth year. What I am

asking you is whether that plays out in exactly the way I heard it said for a board like the Hamilton Board of Education.

Mr Lenglet: The original addition of funds, the \$165 million built into the grant ceilings, is certainly in the base and at the end of the six years is in the base and will continue to be inflated along with the general legislative grant itself. There is no question that this sum of money will be added and identified as additional funds available for education.

The additional undertaking that no individual board will suffer a loss of revenue is not defined in the same terms in this. In fact, what we have in front of us is a document that says we can look at it in 1989 and define a position that there would be a loss of \$395,000 under this particular set of circumstances. I think what one would want to look at after that is, what is the relationship of future assessment growth in that particular municipality? Will they continue to suffer a loss based on that growth? I think that would become the critical question in looking at that particular component, which is the second guarantee on an individual board basis for those 13 boards.

1640

Mr R. F. Johnston: That is pretty frightening stuff if that is what that means because that is not guaranteeing a base. Not to put the civil servant on the spot, but that is the trick that is behind it. It is a pretty major loss for a lot of these groups.

The Chair: This is a very complex matter. We understand that and I am willing to give some thought to a flexible program for next Tuesday afternoon if you would like to have the ministry here or request the minister to come here. Before we start clause-by-clause, I am willing to look into that because we do seem to be getting more and more technical each day.

Mr R. F. Johnston: This is not technical; it is philosophical.

The Chair: Okay, technical that has philosophical outruns.

We now have lost the 10 minutes we had gained. I am very sorry but we are going to have to call this. It is not fair to the boards that are waiting. I think we should go on to the Windsor Board of Education.

Mrs Cunningham: The other statement was made while the Hamilton board was here. Perhaps the chairman or the superintendent would like to respond to that statement for some of us as to what that really would mean. If they do not have time to do it in public, we would certainly appreciate having it in writing, as to the

response to that statement. I would have thought that interpretation was not what the boards were living with, at least not from what I have been able to gather. I do not know whether you have the time.

The Chair: I do not want to do it any further now. I think Mr Lenglet has give us what he considers the policy on this. I did not think it was new information, but if people do think it is new information then I think it will have to be responded to at a later time.

Thank you very much, Mrs Clarke, and the other people who are with you, Mr Shewfelt and Mr Rielly. It has certainly been helpful to have the Hamilton perspective on this matter.

May I have the Windsor Board of Education, Mr Dureno and Mr Payne, please. If any of you would like to follow up in writing with something further after your presentation, feel free to present it and it will be distributed to the committee.

WINDSOR BOARD OF EDUCATION

Mr Payne: I am Steven Payne, director of education and secretary for the Windsor Board of Education. With me is Robert Dureno, our superintendent of business and treasurer of the board.

I would like to express the regrets of our chairperson, Tom Kilpatrick. He had a previous board commitment that began at four o'clock in Windsor today and could not be here this evening.

Also, I would just like to remind the committee that you are now dealing with the board that can say we are number one. In the impact study that was completed, our board is the one that is most negatively affected. We thank you for this opportunity.

The Board of Education for the City of Windsor is appearing before the standing committee on social development to express our deep concern regarding the funding guarantees that have been made by the government as a result of the introduction of pooling of commercial and industrial assessment.

Our concerns lie in three main areas: first, inadequate funding as of 1 January 1990 when pooling of commercial and industrial assessment becomes effective; second, lack of funding on an ongoing basis for the continuance of programs as a result of the loss of commercial and industrial assessment by the Windsor public board; third, the omission of a guarantee in Bill 64 covering the loss of revenue on a one-time basis and on an ongoing basis.

The public school board in Windsor has supported the concept of regional pooling of commercial and industrial assessment consistently since the time the government legislated that the extension of funding to the separate school system would take place. This position was taken by the board, first, to avoid any divisive action developing within the city of Windsor between public and separate school supporters, and second, because of the position the government enunciated that no public school board would suffer financially from the loss of revenue as a result of sharing of assessment.

We have grave concerns over the way the government is intending to fulfil its commitment made on this issue. Based on the estimates produced by the provincial government, the Windsor public school board will be one of the hardest hit boards from the pooling of assessment because of our high commercial and industrial assessment base. We do not believe the government is adequately funding the loss of tax revenue as a result of sharing with the coterminous separate school board.

Mr Dureno: We have a chart indicating some of the figures that have been produced by the Ministry of Education. To summarize, our loss of tax revenue will be a little over \$12 million. That will produce additional grant in the current formula of slightly over \$7 million, to produce a net shortfall of \$5 million because of the loss of commercial and industrial assessment.

The ministry has indicated that at this time it is also going to increase the grant ceiling, which will produce \$2,145,000, which then, in its terms, produces a net loss of \$2,910,000. Our contention, upon which we will elaborate in a minute, is that this \$2,145,000 which represents the general increase in the grant ceiling really has nothing to do with lost assessment. I am sure you have heard that before. All boards are getting that increase whether they lost assessment or had increased assessment, so it really is not directly attributable.

The general increase in the per pupil grant ceiling of the \$2,145,000 will not be received as a result of the loss of assessment revenue. This additional grant will be received by this board along with all other boards in the province independent of any consideration of lost assessment.

There has been general recognition for a number of years that the grant ceilings in education have been inadequate. This adjustment has been made to assist all boards in the province,

public and separate, due to expenditure pattern pressures.

We are sure it is more than just a coincidence that this long-awaited announcement for increases in the grant ceiling comes coincidentally with the announcement of the loss of tax revenue for this board. It is our contention that the government has not kept its commitment to reimburse this board for its loss of tax revenue on this snapshot view of conditions that exist in 1988. If the government fulfils its promise and remains true to its word, it will provide special assistance to this board for loss of assessment of \$5,055,000, not \$2,910,000.

As a result of that, our recommendation is that the provincial government provide to this board and all other similarly affected boards additional grants to totally offset the loss of commercial and industrial assessment to the coterminous separate school board as it is calculated on 1 January 1990. This additional grant should be independent of any general increase in grant ceilings.

Mr Payne: The preceding comments have been made as a snapshot position at a point in time and those comments are valid for that purpose. In addition to this, the negative impact of loss of commercial and industrial tax revenue will continue for the Windsor public school board on a yearly basis into the future.

Programs have been established by this board as a result of community expectations and a high level of service has been provided. Specific examples of these initiatives include a highly developed special education program to meet the needs of the community and a highly developed technological studies program. In order for these programs and others to be maintained at their current high level of service to the community, normal and usual increases must be financed on a year-to-year basis.

The loss of commercial and industrial tax revenue will not only impact on a one-time basis, but will negatively affect us each year. There is no provision by the provincial government to assist public school boards for the loss of the commercial and industrial assessment to the coterminous board on an ongoing basis. We consider this to be a serious flaw in the provisions that have been announced to date, and again, it is not in keeping with the government's commitment that no public school board will suffer as a result of the loss of commercial and industrial assessment.

Our recommendation in this area is that the provincial government provide to this board and to all other similarly affected boards on an

ongoing basis additional grants to offset the loss of commercial and industrial assessment to the coterminous separate school board.

We also believe the government should meet its commitment for 1 January 1990 and on an ongoing basis for the loss of commercial and industrial assessment. Additional provisions should be adopted to accomplish this. The implications for the Windsor public school board are so significant that we believe a guarantee for the full effect of the loss of tax revenue as a result of pooling commercial and industrial assessment should be formally provided for in a significant way in Bill 64. To leave any reference to the guarantee out of the bill simply raises the suspicion in the public's mind that these provisions can easily be altered without the formal process that accompanies the change in legislation.

Our recommendation here is that the provincial government provide in legislation a guarantee that the Windsor public board and other similarly affected boards will not suffer financially on a onetime or ongoing basis for the loss of commercial and industrial assessment to the coterminous separate school board.

1650

Mr Dureno: On the following page we have some statistics that I think indicate the seriousness of the situation in Windsor. It is twofold, I guess.

One of them is the sharing of commercial and residential assessment that takes place at the public level. You can see that our commercial assessment is actually higher than our residential, and that is the amount of assessment that is going to be shared as of 1 January 1990. So it will affect us very seriously, although we have not been able to fully impact this because I do not believe we have sufficient information to do so.

This has not been announced by the government and it leaves me, as the treasurer of the board, in a very difficult position in giving the board really accurate information on this change because there are still a lot of unanswered questions and a lot of old data being used to analyse what the impact may be.

On the bottom half of that particular page, you see that in the Windsor situation, we are actually financing \$22 million worth of ordinary expenditures in excess of the grant ceiling. Obviously that is now largely being financed by the commercial assessment, which will be lost in 1990 and subsequent years. That is one of the major concerns we have, both in the onetime loss and in continuing to finance increases that must

be made in that base in order to continue the present programs.

On the following page we have listed some unanswered questions that we would like answered, although not necessarily today, in order for us to complete our review.

1. How much of the Windsor public commercial and industrial assessment is attributed to publicly traded companies? There has been an estimate made, but I do not believe that information is really available in specific terms. It certainly is not available to us.

2. How much assessment for businesses whose shares are not publicly traded will be directed to the separate school board? Again, there is an estimate made. I do not believe that information is available.

3. How will the commercial mill rate be established in 1990? I have heard all kinds of rumours. I do not know how that is going to be established. Are there going to be two mill rates, one for public and one for separate? Is it going to be a combined mill rate? I do not know.

4. Will a company whose shares are publicly traded know how much of its taxes are for public school purposes and how much are for separate school purposes? If there are two mill rates, they would. If there is a combined mill rate, we have a problem with that. If it is not separated and if they do not know, if Chrysler does not know how much it is directing to the public system and how much it is directing to the separate system, then we think there may be a problem there with accountability.

5. This question concerns us, depending on the answers to some of the previous questions. How will the \$7 million deficit of the Windsor Roman Catholic Separate School Board affect the calculation of the commercial mill rate in 1990 and subsequent years as it relates to businesses whose shares are publicly traded? If there is a combined mill rate, will they pick their deficit up in that calculation and will we then be blamed for part of that increase? We do not know if it is going to be separated or not.

6. This is a question we legitimately have: Is the government pushing these changes through with undue haste without disclosing the answers to some of these very basic questions?

The last page is just an example of the concern that we have. This is a copy of the impact statement that was produced by the Ministry of Education showing Windsor's line. I would draw your attention to the fourth line from the bottom on the list of boards, the Windsor Board of Education. On the right-hand side it indicates

that the impact on the average household is \$28. That was an estimate given to us at that time.

The information on the bottom of this page indicates the number of households in Windsor. That was obtained from the 1988 assessment commissioner's report. It indicates that there are 77,516 households in the city; approximately 63 per cent of the residential assessment goes public. So if you apply that 63 per cent to the number of households, you really end up with approximately 48,835 public households in the city. If you divide that into the \$2,908,000 that the ministry estimates we will be in shortfall, that comes out to \$60 per household instead of \$28. That is over a 100 per cent variance in that estimate.

It is these kinds of figures, I guess, that leave us at a loss. I am concerned that we really do not know how this is going to affect us and we do not believe that the government really knows. If they do know, they certainly have not told us. Those are the kinds of concerns we have. I think that completes our presentation.

The Chair: Mr Dureno, I see you still have that ultimate art of being able to ask every question possible. I remember that characteristic.

Mr R. F. Johnston: I have great questions too, but I do not think you should be upset with a government that is only 100 per cent under what might be the actual figure. That is sort of par for the course, it would seem to me. But at any rate, I think that you have put your finger on a number of serious issues here. I do not know if you would like us to ask some of these questions of staff right now or if you would rather just get them in as we move along.

The Chair: I do not really think we have time unless you want to pick one favourite, Mr Johnston.

Mr Jackson: I want to pick two questions that I have for staff, one of which you have put down and the other you have not. How are the mill rates going to be established?

Mr Lenglet: The assessment of publicly traded corporations will be indicated on the assessment notices to be mailed in January and it will show, as it always has for corporations that have a split assessment, a portion that is public and a portion that is separate so that the corporation will have knowledge of that split, its assessment at the time of the issue. So the education mill rates will show a portion of that assessment at the public rate and a portion at the separate rate.

Mr R. F. Johnston: My other question goes back to the last presentation, and I am sure is of interest to the Windsor board. If I understood what you were saying at the end of that presentation about assessment growth, you seem to have put together the notion of assessment loss due to the switching, the sharing or pooling with the notion of assessment growth and base.

If I understood what you are saying, it is that each year, if the assessment base grows, the public board, which might have been in a compensatory position, will have deducted from its compensatory grant the amount of money by which its base has now grown. Is that what you are saying in merging those two notions?

Mr Lenglet: I am saying that you could put forward a package which would incorporate that and assure the boards that in their current position where they lost assessment, they would be provided with a sum of money that would be paid and would continue to be paid. The only thing that would offset it is the growth in the assessment base that they experience.

Mr R. F. Johnston: But is that saying what I am just saying, that if growth areas like Windsor could be, or Toronto would certainly be at this period—if you take their figure in 1990 where perhaps the estimates are close to what you said but in the following year their commercial estimates are up because of growth in the area, then they might lose their compensatory grant in 1991?

Mr Lenglet: In fact they would have to replace the assessment they had lost, yes.

Mr R. F. Johnston: In other words, you are mixing apples and oranges here, as I see it. As a government, you are basically saying that there is a loss on a base as they exist in this time frame right now that needs to be compensated; there would be no loss. But if the area happens to grow, not to mention it will have other needs that are growing along with that, then all of a sudden, that is going to be part of the factor that is going to reduce the government's responsibility for this basic loss. That is really compound.

Mr Lenglet: I am only suggesting that it would be possible to look at it that way. I am suggesting that in fact, if you look at perhaps the particular boards, they will experience commercial growth and that commercial growth puts them actually in a very favourable position compared to most boards across the province.

Therefore, you could look at that as assessment that they might have had in 1990 except for these changes. That assessment, because of the

change in the designation roles, is no longer available to them and in the case of the growth areas, if there is in fact growth, it is possible that one could put forward the proposition that that growth is putting them back in the positions that they were in.

Mr R. F. Johnston: I am just saying that politically, from my perspective, that is an unacceptable presumption and we are going to have to hear from the government pretty soon as to whether or not that is an assumption that will be written in or is the guarantee it seemed to be on face value, and this is a very different kind of guarantee.

The Chair: We are going to attend to that later, we have agreed, Mr Johnston, correct?

Mr R. F. Johnston: But we want to be clear on what was said.

Mr Tatham: If I may just make a comment, having been involved for 35 years in municipal politics, it often depends on where people live, where education paid for by industry goes, because you can get lots of industry in one spot and you know, people benefit, then people go somewhere else and the costs go up. So that is a question. But I am wondering what it costs, if I may ask, to educate a child going to separate school and going to public school in Windsor. Do you know the cost per pupil?

1700

Mr Dureno: The public cost for a secondary pupil in Windsor is about \$5,500, and at the elementary level, it is about \$4,300 or \$4,400. I do not know what the similar figures are for the separate school boards.

Mrs Cunningham: Looking at page 3 of your presentation, just as a sort of an editorial comment, I do congratulate you as the board that was, I think, extremely positive in your relationship with your coterminous board all through those negotiations. I think you were the board that sold a school for a dollar, if I am not mistaken.

Mr Dureno: That is correct.

Mrs Cunningham: I was on the London board at the time, and it showed wonderful modelling for all of us. It does not pay off some days maybe, but we will see, will we not? On page 3, your expectations around your loss would be to have your shortfall replaced, all things being equal. Would that not be a fair assumption?

Mr Dureno: Yes.

Mrs Cunningham: Could I then ask a question of the staff around that? How does the \$2.1 million figure relate? Is that the intention of the government to the Windsor board this year as far as you are concerned?

Mr Lenglet: The \$2.1 million is new money that is there in order to—the sum was calculated in order to provide an increase in the ceilings with a corresponding increase in operating grants so that the public system as a whole across the province would not suffer a net loss of revenue.

Mrs Cunningham: Okay, that is the intent of the government. So since they do in fact suffer—this is a very specific example, so I can ask a very specific question—the very specific loss is \$2.9 million?

Mr Lenglet: That is correct.

Mrs Cunningham: Okay, so what is the intention of the government around the \$2.9 million?

Mr Lenglet: The intention of the government is that the board would not suffer that revenue loss.

Mrs Cunningham: So you would be replacing the \$2.9 million?

Mr Lenglet: Yes.

Mrs Cunningham: So truly, there is no increase to the ceiling? There is just a—

Mr Lenglet: No, there is an increase to the ceiling. That is the amount that is referred to under the \$2,145,000.

Mrs Cunningham: Well, if they will not suffer a net loss given the intent of the government and the net loss is \$5 million, correct?

Mr Lenglet: The net loss is \$5 million if all that happened were on a static picture. If we transferred the assessment which would be a loss of tax revenue, you would gain grant dollars as you lost that assessment. The net of that position would be a \$5-million deficit.

Mrs Cunningham: All things being equal.

Mr Lenglet: Yes, then you add the \$165 million with a corresponding increase in the grant ceilings. At this point, 58 of the 71 public boards are better off than they were and 13 are not. Windsor is one of the 13 that are not better off.

Mrs Cunningham: So the assumption, therefore, would be that in order just to stay the same, the Windsor board is telling us it needs \$5 million.

Mr Lenglet: And we are saying that it has received a part of that \$165 million and that it is

worse off on a comparison to the starting position of \$2.9 million.

Mrs Cunningham: You are saying you are going to give them \$2.9 million?

Mr Lenglet: That is correct.

Mrs Cunningham: Politically then, the government can say that this board has not suffered a net loss because of the extension of funding, but the loss it suffered is the increase in the ceilings that other boards got where they did not in fact suffer a net loss due to the extension of funding. That would be a fair statement, would it not?

Mr Lenglet: I am not sure of the relation of this to the extension of funding. This \$165 million will be a defined amount that will be identified as a separate addition to the general legislative grants and the increase in the ceiling that comes out of that will be identified. The Windsor board, like all other boards, will share in the benefit of that.

Mrs Cunningham: Right, but in fact they have suffered a net loss of \$5 million. No matter how you answer the question, if you really wanted them not to suffer because of the extension of funding, you would give them the \$5 million. Correct?

Mr Lenglet: No, I cannot accept that. They in fact have received \$2,145,000 of that \$5 million.

Mrs Cunningham: Okay. Then you give them \$2.1 million more.

Mr Lenglet: The \$5 million is calculated before we added \$165 million into the grant ceilings and into the operating grants. When we added that \$165 million in, Windsor got some of it.

Mrs Cunningham: Right.

Mr Lenglet: The money is new money. It is added for the exact purpose of ensuring that the public system as a whole will not lose revenue on a province-wide basis. Windsor receives \$2.1 million.

The Chair: Mrs Cunningham, I think you are going to have to continue this with Mr Lenglet. It is a very technical question.

Mrs Cunningham: Well, Madam Chair, as long as we can go on record, I am going to agree to disagree with this. I will pursue it again, but I am sure the Windsor board will be pursuing it because the questions and answers are very clear and you will have a chance to look at them in Hansard. If there is anything we should know to clarify for other boards, I think all members of the committee are interested in hearing that and you would be wise to share it with us.

The Chair: Thank you very much, representatives of the Windsor board. If you do feel you would like to give us another little piece of paper to go along with your brief, it will be distributed to the committee.

Mr Nyitrai, your brief is very short. I hope that we will be able to pick up some time here. I presume that you can be succinct. I see Mr Lauwers is back again. Okay. Let us go please, folks, as fast as possible.

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

Mr Nyitrai: Thank you very much for entertaining and hearing us. Because the brief is exceedingly short, I would like very much to read it into the record, if I may, please.

The Ontario Separate School Trustees' Association is in full support of the principles contained in both components of Bill 64, namely, those affecting the improvement of access to corporate and partnership school support and those affecting school board boundaries.

For this presentation to the select committee, our association will focus on the boundaries component of the bill only. We do this because we support, in its entirety, the position expressed in the brief earlier today to your committee from the Completion Office Separate Schools on the financing component of Bill 64. OSSTA is a member of COSS and was intimately involved in the development of its brief.

OSSTA is strongly supportive of the principles on which the changes to the boundaries of our separate school boards are based. We have supported these principles ever since we first started in June 1988 to address in earnest the issues surrounding the alteration of our school board boundaries.

On 17 June 1989, our board of directors passed a motion urging the Minister of Education to enact legislation that could (1) make the boundaries of the separate school boards coterminous with the boundaries of the local public boards, (2) ensure that all gaps left between three-mile zones are filled and (3) reform the method by which separate school boards are established and extended to reflect modern conditions.

We were understandably pleased to note that Bill 64 incorporated each of the points in our policy on the adjustment to our boundaries. Our boards recognize that this legislation will modernize the constitutional guarantees given to Roman Catholics in the establishment and management of their own school boards.

In supporting Bill 64, we wish to bring the following points related to the boundaries to your attention.

1. We do not expect that closing the gaps between three-mile circular zones will appreciably increase the assessment base of separate school boards, nor will it adversely affect public boards in those areas in which the gaps occur. This is mainly because gaps in the three-mile zones occur where there are few people and little assessment. If there were people or assessment in the gap, a zone would already have been established.

2. Further, we fully expect that closing the gaps will be a financial burden on some of our separate school boards because of the obligation to service those few families in the gaps. But our boards have accepted these added costs as their commitment to providing Catholic education.

3. Squaring the zones along municipal boundaries will clear up some of the anomalies and make Bill 64 easier to administer. It will generally have little effect on the assessment of the public school boards. It will simply transfer assessment from one separate school board to the other.

1710

4. Under the Education Act, separate school boards grow through formation of zones. That method of growth has not, in principle, been changed by Bill 64. The zones will now be square rather than round, thereby eliminating what has been identified as a troublesome "doily effect."

5. The Education Act also establishes a second method of growth in the territorial area of separate school boards, and that is by regulation. Bill 64 does not change this method in principle.

6. Some separate school boards will be automatically increased in size by Bill 64, as will some public boards. This is not the first time legislation has done so. The creation of the urban separate school zone had the same effect, which was most pronounced when regional municipalities were established in the early 1970s.

In conclusion, our association wishes to reiterate its support for the principles contained in Bill 64. We urge the select committee to report Bill 64 to the House with the amendments that have been proposed by Completion Office Separate Schools, and recommend its third reading and royal assent in time for the implementation effective 1 January 1990.

We are ready to answer some of your questions. I did a disservice to the committee. I neglected to introduce Peter Lauwers, our legal counsel with the firm of Day, Wilson, Campbell.

The Chair: Thank you very much. You do bring another perspective that we have not discussed at great length, so we should have some questions.

Mr R. F. Johnston: I have no real comments on what is in the brief, because I accept what you said, and about the doilies, etc. I think that is all appropriate to fix up those strange anomalies that existed out there. We, as a party, as you know, are in favour of the principles as well.

I want to ask you about one of the principles that has been coming up a lot with the public boards, and that is the notion that no public board should actually end up a net loser as a result of this move. I wonder if your association has taken a position on that principle.

Mr Nyitrai: If you are referring to the component associated with the financing side of it, I would like very much just to indicate that the support that we had played specifically to the COSS brief, and the presentation that was done in the COSS brief, we support in its entirety as an association. We are particularly here to deal only with the issue surrounding the boundaries of the bill, and I would like very much, if I may, to contain my comments to the boundary issue.

Mr R. F. Johnston: I regret that, because I think it might be useful if the separate system was at least willing to say at this time that it accepts the principle, which has been enunciated by the government, that no public board should be a net loser. I would have hoped that we would at least hear that come forth from your lips, or Tom's, as he comes up here now.

The Chair: I do not think I have ever seen you wear the OSSTA hat before, Mr Reilly.

Mr T. Reilly: It is a wig.

The Chair: I think that would be a good term for it.

Mr T. Reilly: Going back to the consultations, I think it was part of everyone's understanding that there would not be a loss to any board. I think, quite honestly, the discussion around it is becoming very confused and jumbled, and you need time to straighten that out, but in principle, in terms of a loss, our position was that boards should not lose in the phasing-in period.

Mr R. F. Johnston: I think that is an important principle to be put forward from the other side, the net gainers in all of this, whether it is your system or whether it is the public boards which will be doing better out of this.

I agree with you that things are fairly confusing about it, but do you accept or can you

give me some thoughts about what we have heard this afternoon, which is that areas of growth, for instance, York region—I can think of both systems in the York region, which may have quite a growth in its industrial-commercial base, but an awful lot more growth in its residential base, and the student burdens that are going to be put on them over the next little while. To bring in the increased growth in the industrial base for any of the boards after the 1990 assessment is done and have that taken away from the compensation seems to me, if that is going to be what is going to take place or may take place, to be mixing apples and oranges and is actually moving away from the principle that seemed to be enunciated so clearly by the minister in second reading.

Mr T. Reilly: As I listened to the discussion this afternoon, it seemed to me that in the first year it was fairly clear-cut what the loss would be. Thereafter, it becomes almost impossible to trace where you are. We had some simulations done during the consultations by the ministry and it became apparent that things are starting up and closing down quickly. You just need to look at any mall, for example, and see the number of stores that change hands or close to know how much of it is replacement, how much of that is real growth, where your starting point and ending point would be. It would be almost impossible to reckon what the compensation was, based on a beginning period one, two, or three years ago. I think it is a practical impossibility to try to pin it at one point in time, and I do not see how else you could do it, other than take what the assessment is, calculate what their income would have been and give the difference in compensation. That is just from a practical point of view, if they are dealing with the principle of it.

The Chair: Any further questions? If that is the case, this is very helpful, because then we—

Mr R. F. Johnston: I will be coming back to that, unless you want me to take more time now.

The Chair: If you have further questions, I will grant them for five minutes.

Mr R. F. Johnston: If one is presuming that the basis for the need for compensation is a net loss of actual and potential assessment because of a loss to your system, if I can put it that way, then the real difficulty I see with moving in the direction you are going is that we move away from that principle and on to another principle of whether there has been growth in the region in general and that sort of thing and not on what the effect of the pooling was.

It seems to me that somehow in this formula, you cannot lose contact with that base, what the essential loss was because of the separate system now getting that which the public system had before. That is what I worry about in terms of an annualized look at the actual assessment that given year, without some kind of real base to work it from. I have a real concern that certain areas of growth are just going to automatically lose, even though their actual needs may have grown exponentially as well.

Mr T. Reilly: Again, in response, it is practical. The difficulty that is being enunciated resides with the 13 boards, which really were so rich in commercial assessment that the ceiling could not go up high enough to compensate them within the ceiling, so therefore some other mechanism for compensation had to be found.

I can only express again that I see practical difficulties with that mechanism, however you go at it. I am sure the people who are expert in it will work on various formulas with you on it, but I think the fact remains that for the vast majority of boards in the province, particularly rural boards and boards poor in assessment, both public and separate, the raising of the ceilings is the key to increasing the revenue, and 80 per cent of the boards will suffer, if you like, an increase in revenue over the next few years.

The Chair: Thank you very much for your honesty. You were there in the consultative discussions and we appreciate your wisdom that you have brought to this discussion.

Mr R. F. Johnston: Is that five minutes?

The Chair: Not quite, but you do not want to stretch me too far, do you?

Thank you very much for presenting to us, Mr Nyitrai.

Let's have the Toronto Board of Education. The reason you are moving up earlier is that we have a vote at a quarter to six, so we would like to give you your full time. Trustee Vanstone, will you be presenting?

Mrs Vanstone: Yes. We will all have a little bit to say, but I will possibly introduce it.

The Chair: Okay. Trustee Nelson will be presenting as well and—

Mrs Vanstone: Trustee Rosario Marchese, who is the chair of our school programs committee.

The Chair: I do not believe his name has been presented to us in advance.

Mrs Vanstone: Sorry. The usual presenters found themselves with an emergency meeting this afternoon, so we have come instead.

1720

TORONTO BOARD OF EDUCATION

Mrs Vanstone: The Toronto Board of Education appreciates having the opportunity to appear before the standing committee on social development and to make its views known concerning Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment.

Having said that, I am not going to read the brief. You will have it in front of you, if it is not already. I think we will just go through it and hit the key points.

I am Ann Vanstone, as some of you know. I am the chair of the education finance committee at the Toronto Board of Education, but I have been involved with the financing of education for some considerable time, both as the former chair of the Toronto board and the past chair of the Metropolitan Toronto School Board and also through involvement with province-wide trustee organizations. It should come as no surprise that the Toronto board is here to address yet another committee of the Legislature to present its concern.

The Chair: Very regular happening.

Mrs Vanstone: Our position, as stated on page 2 of our brief, has not changed since we have presented our response to the Macdonald commission in 1986. Since that time, the extension of public funding to separate schools has been implemented and we have the responsibility to attempt to ensure that the provincial commitment that public school boards would not be financially damaged is adhered to.

Therefore, we should like to see, at the very least, the \$180 million phase-in enshrined in Bill 64. I am sure you have heard that from other boards; we are very strongly saying the same thing. Vague reassurances to create regulations in respect of this compensation cannot be viewed as sufficient guarantees for us. We want to ensure that public school boards in Metropolitan Toronto will not suffer a loss of revenue. We have, as you know, only ourselves to depend upon, getting no provincial grants. That is the thrust of the first part of our presentation, and Fiona will now continue.

Ms Nelson: For the record, my name is Fiona Nelson. I have been a trustee on the Toronto board for 16 years, the chair of the board and the president of Association of Large School Boards in Ontario. I am currently on the board of directors of the Ontario Public School Boards' Association, but it is probably for the last hat that

I am about to mention that it would be most useful for me to comment today.

I have been for the past few years the Toronto board's representative on the city council's assessment reform working group. It is especially because of this that I am concerned about the next section of our brief, starting on page 4, which is the long-term tax act implications.

I think there are two principles that would be useful for me to mention at the outset. One, I would suggest that it be kept in mind that we not use funding mechanisms to compete for pupils, but to pay for the best possible programs for those pupils. Second, let's not kill the goose that is laying the golden egg in the city of Toronto, which is the commercial sector. When you look at the long-term financial implications, you will see that there are several things happening to the commercial sector. The residential sector creates the costs, and the commercial sector tends to pay for them. The commercial sector in Toronto has been paying not only for the city of Toronto but also for Metro, and now, through the commercial concentration tax, the lot levies legislation, this piece of legislation, the employees' health tax, there are also going to be additional pressures on the commercial sector.

As well, in Metropolitan Toronto, as you may be aware, the council has adopted a form of market value assessment which protects the residential sector by again laying something on the commercial sector. In your deliberations over this piece of legislation, we hope that you will keep those pressures in mind, because downtown Toronto is not going to be a live goose much longer. We are very worried about the fact that since it has been paying 100 per cent of our costs and is now about to move its golden eggs farther afield, that we are, in fact, going to be in quite serious trouble.

You will see listed in our brief several of the things that I have mentioned, so I will not go into them in detail, but it does seem to me that when they are all taken together, the pressure on the commercial sector in downtown Toronto is getting to the point where it is going to become almost unconscionable. So we really are very concerned about that issue.

Mr Marchese: I am Rosario Marchese, chair of school programs at the Toronto board. I have been a trustee since 1982 and want to summarize simply what is here, and it is in front of you, but I want to repeat it. First, I want to make some comments and say that how we provide for the developmental needs of learners will affect the economic and social wellbeing of this province,

and in addition, as stated in the first report of the Premier's Council, to compete effectively in the new knowledge-intensive global economy that relies primarily in human capital, excellence in educating our workforce is our single most important strategic weapon.

We support that and we believe in that and we think that having a well-funded public educational system is critical, and we believe that this bill will hurt us. So in summarizing some of the comments that have already been made, I want to say that we strongly urge you and your colleagues to consider amending this legislation to provide specific clauses referencing the six-year phase-in compensation to be directed to public school boards. Second, the Toronto Board of Education requests that some form of long-term compensation be provided to public school boards beyond the six-year phase-in to ameliorate the effects of the permanent tax-base loss that will be experienced.

Third, we urge you and all members of this Legislature to give serious consideration to the effect of Bill 64 and to other government initiatives which, in combination, now place a significant and intolerable burden on local property taxpayers. I want to say, in addition, because we have not written that up, that given that there is a six-year phase-in compensation, what we recognize is that at the end we fear there will be no compensation for that loss, and it is built in. I think we recognize that and we would like to avoid it.

Mr Tatham: Thank you very much. I appreciate your comments. On page 6, you said that the provincial government operating grants during the past nine years had declined from 20.8 per cent to zero. What was the ratio of residential, commercial and industrial assessment, say, from 1981 to 1989? Do you have any figures on that?

Mrs Vanstone: In Metropolitan Toronto it is about 52 per cent commercial assessment. I do not know what the differential is from nine years ago, but at present, 52 per cent of the revenue that is used to support public schools in Metropolitan Toronto comes from commercial assessment and 48 per cent comes from residential.

Mr Tatham: Right, but you do not know where you started from.

Mrs Vanstone: No. I am sorry, we do not have that data.

Mr Tatham: Thanks very much.

Mr R. F. Johnston: Fiona, you have not been here long enough to hear some of the discussions

that have taken place here, nor the last discussion with Tom Reilly around the fact that ministry officials are now saying that in, say, 1991 there would be a review of the net loss to the Toronto board that if your commercial-industrial assessment has risen during that period, that could well be deducted from your compensatory grant.

The arguments for that, as you have heard, that Tom was putting forward are, on the one hand, that it is very difficult to deal with this from just a static base. On the other, the 13 boards are so wealthy anyhow that somehow this is appropriate. I wonder if you might respond to that reality, because it may not be a problem for you just at the end of the six-year period, and the seventh year, as we had thought, it might just be. It looks like it could be within a year or two, if your commercial-industrial base rose significantly.

Ms Nelson: As I am sure you are aware, the gap between the rich and poor in the city of Toronto is widening rapidly, largely because of the horrendous housing costs. Many of the compensating factors for the children, who seem to be the largest segment of the poor in our society, are made by the school system. There are continuing and additional pressures upon us to get into things such as breakfast and lunch programs and a variety of other social programs because we are a very useful delivery system.

It is extremely difficult to do that if our funding base is eroded, because those are very expensive programs. If we are going to do a decent job educating children—and as Rosario pointed out, they are our most significant resource—we are going to have to maintain our additional levels, since it seems unlikely that in the near future we are going to get any grants to run our school system and meet the services for children that we must. As you know, we have had mandated by the ministry such things as capping of grades 1 and 2, day care facilities, junior and senior kindergarten, all-day kindergarten. These are things that we very strongly believe in as program components. They also happen to be rather expensive.

1730

While it may appear that our assessment base is rising, if we do not get the compensating grant to make up for the switch over to the pooling then, in fact, it means that we restrict program and we cannot do the things that we need to do to meet the needs of the very large, growing number of poor children that we are attempting to serve. That is not to say that we do not want to have programs for all the children in the city.

Mr R. F. Johnston: If I might propose the argument that would be brought forth from the other side of this, it would be that you have a coterminous board that is dealing with the same kind of social reality and which has the same kinds of needs to be met and that it is currently functioning at a level substantially below yours, although above ceiling at this stage. Therefore, is it not just that if your assessment goes up dramatically that you should have to pay 100 per cent out of your pockets, as the city has been doing these last couple of years. Have you a response to that, because this is local pooling we are talking about?

Ms Nelson: Certainly. Surely that would be reflected in appropriate provincial ceilings, which would compensate in grants.

Mrs Vanstone: Our very strong feeling at the moment is that the ceilings or the foundations, whichever terminology we are now using, do not take into account anything like what the needs are in large urban centres such as ours. I would imagine that the separate school board's needs would be similar, but I would point to—I cannot even remember where I read this—something the Deputy Minister of Education said recently: that it was a much more difficult job for us in a large urban centre like Metropolitan Toronto to educate such a heterogeneous community as we are required to educate and, indeed, it is our mandate to educate.

I think one of the major concerns we have on our board, and we have expressed it at various times in the past, is the various things you are doing around education financing. These are not solutions to the problems. We are tacking little bits and pieces of Band-Aids here and there on everything, and we really need to look at the real costs of education in this province.

I think at the Toronto board, if we felt confident that the people who have to listen to us were listening about our real costs and discussed with us our real costs and gave some credibility to costs that we are experiencing to meet what we see as the needs of the children and adults in the city of Toronto, then we would feel we were well on our way to not coming over to committees at Queen's Park to get you listen us, but let us sit down and start trying to figure out what our real costs are.

The Chair: I am sure there will be some items of interest to that which you referred in the select committee's report on the financing of education.

Mr R. F. Johnston: The select committee will listen to you, but we still want you to come back.

Mrs Vanstone: Oh, you will never get rid of us, I do not think.

There is one thing that we do want to mention that we have not addressed in our brief, but I am sure you have heard it from other people. We assume the notice that went out from the Ontario Ministry of Revenue has simply been in error. The part of the notice that says proportional support will be attached to the number of Roman Catholics rather than Roman Catholic separate school supporters, I regard as an error of rather serious magnitude.

The Chair: I do not think there is anyone here who is in a position to answer that.

Mr R. F. Johnston: That is something we need to discuss with the Minister of Revenue (Mr Mancini) because there is a substantial difference. Obviously, a Roman Catholic who supports the public system—

The Chair: I think we should get an answer on that before next week.

Mr R. F. Johnston: They will not give you their names, though.

Mr Allen: In terms of the overall impacts on the proposal, the tables we have been provided with by the ministry give us some figures on the Metropolitan Toronto School Board. They do not give us anything on the Toronto board per se. Is there a figure that is available for the individual boards in the Metro area, or is that not a meaningful question to ask you?

Ms Nelson: Inasmuch as we have formulas for funding the boards from the Metro purse, I suspect it would be very difficult to separate. As you know, more revenue goes into Metro from the city of Toronto than Toronto gets back to spend. Because of the way Metro acts as banker, it would be very difficult to sort that out board by board.

Mrs Vanstone: I think possibly it has been sorted out board by board and I have seen the data—again, we do not have the material with us today—but for our purposes the important figure is the Metropolitan Toronto figure. How the rest is sorted out among the boards is determined in the Metro arena, so it is the Metro figure that is the key figure.

Mr Allen: But your board is the only one that has had that phenomenal shift of percentages from 20.8 per cent to zero.

Ms Nelson: No. That is Metro.

Mr Allen: I am sorry.

Mr R. F. Johnston: Ottawa is in a similar position.

Ms Nelson: Yes, Ottawa's percentage shift is quite similar.

Mr Allen: Have you a calculation on a per-student expenditure basis of what the impact is going to be of the deficit you will experience under the pooling proposal?

Mrs Vanstone: I am not sure that would be possible to do. Again, the costs per student in the different boards across Metropolitan Toronto are different according to the programs offered. For example, one of the boards, Scarborough, did not until recently offer heritage languages programs—I am sure you are all aware of that—so its heritage language costs were subsumed into the per-pupil costs of the boards that did offer them.

I think one of the things we have to do is to try to break down our per-pupil costs, rather than in a gross figure, into using the terminology that is now becoming common, a foundation figure, and then perhaps putting program figures on top of that, so that our foundation figure might well be quite comparable to foundation figures of boards across the province for ordinary education, that sort of thing.

We do not have the data and what data exist are not meaningful because it is just a raw figure of the cost of operation of the total elementary panel divided by the total number of full-time equivalents. It does not take into consideration our very large heritage languages program, for example, because it is full-time equivalents that are counted.

Mr Tatham: Following that, what are those raw figures per pupil for, say, elementary and secondary schools?

Mrs Vanstone: The Toronto secondary schools are around \$5,700 in the city of Toronto. Once again, with our secondary figures, we have a very large adult component in continuing education for general interest, which, of course, is user-financed, as well as continuing ed for credit, adult day school and that sort of thing, so there are part-time students to some extent in those categories.

Once again, the per-student costs calculation takes that whole operation and divides by the number of full-time equivalents. Again, that number is not particularly useful because of the nature of our operation. It is something else that we have to turn our attention to, to break out again, so that if we start looking at boards across the province we are in the position of comparing apples and apples.

Mr Tatham: Have you any idea what the separate school costs are?

Mrs Vanstone: No. They will be less than that. Once again, they will be rising fairly rapidly because until Bill 30 was implemented the public school boards carried out all of the difficult and expensive education such as vocational and technical education. All of that education has, until now, been done by the public school boards and I assume will continue to be done by the public school boards until the separate school boards have the equipment in place to start performing that kind of education.

The Chair: Mr Johnston wants one short question as we end the day.

Mr R. F. Johnston: It has to do with the Ontario Public School Boards Association recommendations to do with the notional assessment, coming back to that first question I asked; this concept that you may be penalized if your assessment rises.

The OPSBA's concept is one of a notional assessment which would compare the actual figures of assessment during that year with what you would have had if you had maintained your base, and to have that be the comparative that goes through.

I presume you accept that and you would like to see that kind of amendment made to that subsection.

Mrs Vanstone: Very much so.

The Chair: I just want to say one thing that has not much to do with the subject at hand, but I noticed with great interest your Castle Frank pilot project. I hope you will keep us in touch with that, especially those of us who were on the select committee on education that recommended destreaming. We look forward to the report of the way in which you are carrying out that program.

Ms Nelson: It will be a fairly expensive prospect writing curriculum for that school.

The Chair: Oh, Fiona, you always have the last word.

Mrs Vanstone: Just so you will not get confused when you see the name Rosedale Heights Secondary School, that is now the name of the destreamed school.

The Chair: Is that correct? I did not know that.

If I may have the attention of the committee members for one moment, we had one request that was received before we began to meet, from a group that has not been slotted in. That is the Timmins Board of Education. Mr Decker has suggested that we begin next Monday at 3:15 to accommodate the Timmins board and give it 15 or 20 minutes. We are going to run late next

Monday, as you know. I am going to try to keep on time, but it will mean that we could be here until about 6:30. It will be a good three hours and 15 minutes' working session.

Mr R. F. Johnston: I think we should try to do that, but I think we should recognize that we cannot guarantee when orders of the day are going to fall upstairs. We should try to start anyway and if some of us cannot be here and we

do not have a normal quorum, you should start, but with apologies.

The Chair: Timmins is a long way to come, so I wanted to be sure we had agreement. To bring people down from Timmins for 20 minutes is onerous in itself. We will agree to meet them at 3:15 first off.

The committee adjourned at 1745.

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Witnesses:

From the Ministry of Education:

Riley, Michael, Counsel, Legislation Branch

Lenglet, Brian, Senior Manager, Policy/Legislation Liaison

From the Completion Office Separate Schools:

Reilly, Thomas J., Executive Director

Lauwers, Peter, Legal Counsel; with Day, Wilson, Campbell

From the Scarborough Board of Education:

Neilsen, Helena, Vice-Chairman

Mason, Don W., Controller

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Rielly, K. A., Director of Education and Secretary

Shewfelt, Paul, Superintendent of Finance and Treasurer

From the Windsor Board of Education:

Payne, Steven, Director of Education

Dureno, Robert, Superintendent of Business

From the Ontario Separate School Trustees' Association:

Nyitrai, Ernest F., Executive Director

Lauwers, Peter, Legal Counsel; with Day, Wilson, Campbell

From the Toronto Board of Education:

Vanstone, Ann L., Chairman

Nelson, Fiona, Trustee

Marchese, Rosario, Chair, School Programs





No. S-8

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Education Statute Law Amendment Act, 1989

Ottawa-Carleton French-Language School Board Amendment
Act, 1989

Loi de 1989 modifiant des Loi concernant l'éducation

Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue
française d'Ottawa-Carleton

Second Session, 34th Parliament

Monday 27 November 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 27 November 1989

The committee met at 1525 in room 151.

EDUCATION STATUTE LAW AMENDMENT ACT, 1989

OTTAWA-CARLETON FRENCH- LANGUAGE SCHOOL BOARD AMENDMENT ACT, 1989

(continued)

LOI DE 1989 MODIFIANT DES LOIS CONCERNANT L'ÉDUCATION LOI DE 1989 MODIFIANT LA LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON (suite)

Consideration of Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment; and Bill 65, An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988.

Etude du projet de loi 64, Loi portant modification de la Loi sur l'éducation et de certaines autres lois relatives à l'éducation ; et du projet de loi 65, Loi portant modification de la Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

The Vice-Chair: I would like to welcome you here. This is the standing committee on social development and we are here to have input on Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment, and Bill 65, An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988.

Currently in the House we are looking at Bill 66, so the member for Burlington South (Mr Jackson) and the member for Scarborough West (Mr R. F. Johnston) have asked our indulgence as they divide their time between the House and here.

I would like to welcome the Timmins Board of Education, with James Nicholls, chair, and Irene Anton, director. Welcome. I am very happy that you were able to come today and I will let you go forward with your presentation.

TIMMINS BOARD OF EDUCATION

Mr Nicholls: The Timmins Board of Education would like to thank you for the opportunity of appearing before the standing committee on

social development on the matter of Bill 64; that is, pooling of commercial and industrial assessment.

Providing equal educational opportunities throughout Ontario has been a fundamental operating principle of the Ministry of Education and the government of Ontario over the years. The Timmins Board of Education supports this principle and also the fact that a reasonable sharing of the financial burden between the provincial government and the local communities is appropriate.

It is with these beliefs and commitments that we find we must bring to the standing committee's attention the stress and inequity that will occur in Timmins as a result of the proposed legislation on the pooling of commercial and industrial assessment.

It is our intention to explain why, if this legislation proceeds this year, guarantees for financial compensation are essential.

The introduction of pooling of commercial and industrial assessment will have an extremely negative impact on the ability of the Timmins Board of Education to provide the current level of services to the students and community at a reasonable mill rate compared to the separate board.

This legislation, along with other legislative changes that have had a serious financial impact on this board, are creating a climate of frustration, distrust and hostility towards the provincial government's claim of supporting public boards in their mandates. There is a resentment for the apparent lack of concern for the problems of northern public school boards in particular and for the erosion of support for public school systems in general.

Our records show that if pooling of industrial and commercial assessment had occurred in 1989, our mill rate would have increased by an intolerable 24 per cent, rather than the already excessive increase of 12 per cent. It should be noted that the 12 per cent increase was generated by increases in expenditures of only four per cent and a significant decrease in grants from the government.

The mill rate increase for the separate board in 1989 was also 12 per cent. However, with pooling, that increase would have been substan-

tially reduced. Since currently separate school ratepayers have a slightly lower mill rate than public school supporters, it is clear that in Timmins the public school ratepayers would have been severely affected by the legislation.

Such circumstances will encourage both individuals and commercial enterprises that are eligible, to change their tax support to the separate system which will only exacerbate the problem of financing the public boards.

It should be noted that the circumstances between the public and separate boards are unique to Timmins when compared to other areas in the province. The separate board with an enrolment of 6,165 is larger than the public board which has an enrolment of 4,635. The public board serves primarily the English-speaking population, whereas the separate board serves the French-language community, and to a lesser degree, the English Roman Catholic community. The separate board purchases services for English-language pupils in specialized programs from the public board.

1530

The public board provides a higher level of service for secondary students requiring English secondary technical education, students with learning difficulties; for example, the trainable mentally retarded program, the section 25 classroom and a regional school for those students in northeastern Ontario with very severe physical and emotional handicaps. This level of service evolved prior to the extension of funding, that is, Bill 30, and the resulting en bloc transfer of the French-language secondary school from the public to the separate board.

The Macdonald commission recognized the inequity in the French-language grants in 1984 when it indicated that the funding was insufficient for small French-as-a-first-language programs and higher than needed for large French-as-a-first-language programs.

As a result of Bill 75, there is now a French-language section in the public board that is offering a public French-as-a-first-language elementary program. The French-language grants do not adequately compensate for the expense of offering this program, which at this time is quite small. This is a source of friction that is more keenly felt because of the financial constraints on the public board.

The French-language funds assist the separate school board to provide an excellent program for its students. The public board, on the other hand, has had access to the commercial and industrial assessment to finance expenditures in excess of

the ceiling. This has enabled both boards to provide a comparable level of service.

The Ministry of Education recognized the negative impact of the loss of funding for large French-as-a-first-language programs when it provided transitional funding to the Timmins Board of Education to help phase in the financial impact of the transfer of Thériault, the French-language high school, to the separate board in 1987.

During the last two years, this board has placed in reserve a substantial portion of the ministry's funds that were provided to cushion the impact of the transfer of Thériault. These funds will be withdrawn gradually from reserve and the board will raise an additional \$50,000 each year for the next nine years from our local taxpayers. At the end of this period, the board will be raising \$500,000 more annually from local taxation than would have been required if the transfer had not occurred. The impact per household will now be more severe with fewer taxpayers to carry this burden.

Had the public school board known in 1987 that pooling would be in place by 1990 and that fewer public school taxpayers would be called upon to shoulder the cost of the phase-in of the Thériault transfer and the debt load of Timmins High and Vocational School, more compensation would have been requested.

It must also be recognized that very deeply held emotional, linguistic and political factors were affected by Bill 30 and Bill 75. Following the en bloc transfer of Thériault, we were able to address these factors sensitively so that the community gradually accepted, but did not necessarily support, the transfer of this school of 1,400 students to the separate board.

It was immediately following this transfer that the community placed demands on the public board to provide elementary French-as-a-first-language services to public school ratepayers. This French-language program initiative was undertaken with the belief that the public board was financially sound.

No one in the government questions the fact that pooling of commercial and industrial assessment will have a serious financial impact on this board. We believe, however, that the government does not fully appreciate the severity of the impact this legislation will have on this community and on our ability to provide equal educational opportunities to English-language students in northeastern Ontario.

We are deeply concerned that some educational services will have to be curtailed. The ability

of our ratepayers and the board to accept and adjust to these changes will be slower due to the heavy demands already placed on our system by Bill 30 and Bill 75.

We cannot support the proposition that pooling of commercial and industrial assessment will in any way create equity in educational opportunities in Timmins, nor can we accept that a phase-in of the pooling provisions will satisfy the political unrest or the financial impact that will be felt by public school ratepayers in Timmins. If we accept the fact that pooling will occur, we must at least have input into the phase-in provisions if Timmins is to continue to have equal access to resources to provide the current level of educational programming.

In addition, the phase-in provisions of the pooling legislation must address the following: (a) the per pupil grant ceilings; (b) the French-as-a-first-language funding; (c) the need for specialized services in parts of the province where services are limited.

Accordingly, the government must consult and listen to the concerns of trustees and administrators to adequately understand the consequences of the proposed legislation for communities before it can hope to avoid damaging the public education infrastructure, particularly in northeastern Ontario.

The Timmins Board of Education and the public school ratepayers are deeply concerned about the impact this legislation will have on the community. As the cost of pooling is not isolated to one year alone, and as we have recently committed the board to a long-range plan for the phase-in of the financial impact of the transfer of Thériault and the provision of French-as-a-first-language services, further phase-in provisions must be addressed deliberately and cautiously.

The ramifications of the pooling of commercial and industrial assessment are too great to be implemented without recognizing that the impact will be felt in the services provided to the community and in the classrooms of our schools. We encourage the committee to recognize this fact and recommend that further study on the impact of this legislation, particularly in the north, be undertaken before it is implemented.

The Timmins Board of Education respectfully makes the following recommendations:

1. That the legislation for the pooling of commercial and industrial assessment be delayed for one year to allow time for board and the government to examine and ameliorate the financial and political impacts;

2. That compensation be explicitly guaranteed and provided for in the legislation to allow for some financial predictability for public boards that will be significantly affected;

- 3) That special consideration be given to the Timmins Board of Education for the phase-in of this legislation and that it include (a) grant assistance for the increased debt load carried by the public school supporters; (b) sufficient grant assistance to completely offset the impact of the legislation for two years while adjustments are made.

We would appreciate dialogue with any government or ministry officials to expand on any of the details of our presentation.

The Vice-Chair: Thank you very much for that well thought out presentation, and certainly at this time I would entertain questions.

Mr Grandmaitre: Can I take you back to page 2, your mill rate impact, excessive increases. What was your separate and public school mill rate prior to, let's say, 1986-87? What was your mill rate?

Mr Nicholls: In absolute terms?

Mr Grandmaitre: Yes, because you are pointing out that you would have faced a 24 per cent increase and the separate school board would have faced a 12 per cent increase. What was your mill rate prior to 1989?

Mr Nicholls: In absolute terms.

Ms Anton: I believe in 1988 it was seven per cent. Prior to that I was not on the board so I am not familiar with that. My business official would probably know that, but I do not have it. The previous year to 1989 was seven per cent.

Mr Grandmaitre: Seven per cent difference or what?

Ms Anton: No. In terms of difference?

Mr Grandmaitre: Yes.

Ms Anton: No. Our mill rates are close. In other words, the separate and the public boards have had pretty much the same mill rate increase each year. There is a different mill rate structure because of the area. In absolute terms, the taxes paid on the same house by a separate school supporter would be slightly less than by a public school supporter, not excessively less but it would be a few dollars. Now, on a commercial assessment, it would be a significant amount as compared to a household assessment.

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Mr Grandmaitre: I will take you to page 4 of your presentation, I think the bottom paragraph. You would like to have more consultation with

the ministry. I would like to ask staff what kind of—did you meet with the Timmins board?

Mr Keyes: We are waiting for Brian Lenglet. I believe he is here.

Mr Grandmaitre: Did you meet with the Timmins board or did somebody from the ministry meet with the Timmins board to explain the consequences of Bill 64 and Bill 65?

Mr Lenglet: To the best of my knowledge, we did not.

The Vice-Chair: Do you wish to comment on that?

Ms Anton: At this point, I will leave it.

Mr Keyes: Just a question to the members from the Timmins board: Have you had a chance to look at the table that shows the overall result of the impact on pooling? I know you have said on page 2 that it would be an intolerable 24 per cent. I think that is kind of a nebulous argument in that that would be if the government was not also agreeing to make up for revenues you would lose. I do not know why you have even put that in your brief because you are talking about something that was not going to take place, but have you read the table?

Mr R. F. Johnston: It could be they don't trust you.

Mr Keyes: Never find anyone like that; northern Ontarians are very trusting people.

It does impact, I believe, at the end of the six years. You are one of 12 or 13 boards that will still have some difficulties. It amounts to an impact, on average, of an additional \$4 per household.

Ms Anton: There are a lot of factors by six years that you do not know in terms of transfer of support and that kind of situation. When my business superintendent looked at it, he looked at the 1989 assessment rolls, and using the government formulas for grants and so forth, the difference for us was \$1.75 million, which in a small northern board is a significant amount of dollars.

On the guarantee, our expectation is that probably for 1990 there may be adequate guarantee. However, we are concerned about the long range. One of the areas of the expenses—there are some sensitivities with the French-English area, but the Timmins board built a French-language school a significant time before and that was the school that was transferred. Then an English-language school was built in 1980 and the debentures on that are at 18 per cent. The debt load is pretty heavy. We have had some assistance for that transfer, but if you

notice, we are talking about still having to raise moneys for that.

When we are looking at this loss and another increase, we are not clear. This is one of the reasons we are asking for guarantees for what that will mean to us down the road. We do feel that the government is being sensitive in some areas and that probably for 1990 much of the effect will be ameliorated, but heaven forbid, if the government should change, none the less—

Mr Keyes: You can help assure us of that.

Ms Anton: No, I have—

Interjection: Better the devil you know than the devil you don't know.

Mr Keyes: That is right. That is the old story.

Ms Anton: I have Alan Pope in my district.

None the less, in terms of the public boards right now, I think there is a strong feeling that we do not know what is coming next. We do not know what kind of mill rate to predict and we are trying to do some planning, so that is part of our plea.

Mr Nicholls: If the government would be prepared to make up the \$1.7 million we are losing and project that for some reasonable time—I appreciate that you cannot project it for ever and we are not asking for that. We are asking for time to make up for the consequences of Bill 30. If you take a look at the number of students that we transferred, which was 1,400, as a percentage of our entire student population, it is significant.

We are trying to recover from that particular series and that debt load which will come upon us in two years time. That is really our concern, that we are going to be hitting this in two years time and we will also have to be raising an extra half a million dollars due to the phase-in of Bill 30 and the transfer of Ecole Secondaire Thériault.

Ms Anton: I would like to add that in terms of the en bloc transfer of Thériault, Timmins was very co-operative in that whole area, so we are asking for some co-operation from the government with that.

Mr Keyes: Mr Lenglet may have wanted to make some comment as to whether he would concur in their interpretation of the major difference that would occur in the first year. We do not know the figures actually until we see those assessment rolls in January or February of 1990 so a lot of it may still be speculation in a sense, although I do know business administrators and financial superintendents have good ways of looking at those statistics.

Mr Lenglet: Certainly we have not shown a figure of \$1.7 million at any point. We did show on the impact study released in May a figure of about \$1.1 million which was calculated prior to the addition of the \$165 million to the grant ceilings. Having added that sum in, we showed a negative position for the board of about \$567,000, again subject to the provision that this is done in the 1988 world and will have to be updated with the return of the assessment rolls for 1990. That is the figure we show and that is the figure we are saying we would be guaranteeing that the board will not suffer, will not experience that loss.

Ms Anton: The difference between the mill rates and the expenditures between 1988 and 1989 was significant. The 1988 world is not very realistic.

Mr R. F. Johnston: Surely what we are talking about here is potentially now a difference of \$1 million, not \$500,000 between what you were putting down in your projection and what the board is saying it feels is the real discrepancy.

Mr Lenglet: I think the minister's statement was quite clear that this was the estimate on the date that was available at that time and we would be doing the calculations in February based on the current expenditure that we have available and the 1990 assessment rolls as a return which will contain the actual information on the assessment transfer. These are only estimates.

The Vice-Chair: I assume, Mr Johnston, that you do have another question.

Mr R. F. Johnston: I do indeed. It is probably the only way to get in.

I presume, Mr Lenglet, this is one of these large-growth boards that is getting victimized by this process. That is the way it was being put to us the other day, that the 13 boards were all these large, wealthy boards with a huge tax base that—

Mr Lenglet: If I left that impression, I did not mean to. They are certainly boards that have a significant portion of their assessment base made up of commercial-industrial assessment.

Mr R. F. Johnston: Can I ask you, from the perspective of growth in Timmins at the moment, where we are at in terms of projections of growth in commercial-industrial development and assessment?

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Mr Nicholls: We are a resource-based community. I think to try to project the resource-based community, which has a mine operating today which may not operate tomorrow and may find another mine the year after, is very difficult.

At this present time for the mines in our community, with the price of gold being what it is, it is not a bad outlook. I do not mean that to be a negative term. The price of gold remains high. We are primarily a gold-mining community and a minerals community, so at the present time we are not looking at any particular increase in industrial-commercial assessment.

Ms Anton: If I can just add, I remember reading something that my superintendent of business had, and I think they were looking at a possible two per cent increase in assessment per year in the commercial and industrial pooling. That was a positive one put out by the municipality, so I would suggest that we are staying pretty level. There is not a whole lot of growth. There are some good things happening and we do not expect a decrease, but I do not see that there will be a significant increase.

Mr R. F. Johnston: What kind of fluctuations have there been in the last, say, 10-year period? Gold prices have fluctuated pretty dramatically during that time. Did that have any impact on the board's revenues from this source?

Mr Nicholls: No, we have had one mine that has started and it is a very small mine, consisting of about 200 people. Other than that and some expansion of our largest employer, Kidd Creek, the commercial-industrial assessment has remained rather static and we have had somewhat of a decline in our student population. Our overall population has remained relatively static over the 10 years; it has not increased substantially.

The Vice-Chair: Thank you very much. I am mindful of the time and I am very grateful for your coming to make your presentation.

The next group, with your good grace, is the Conseil scolaire de langue française d'Ottawa-Carleton, or the Ottawa-Carleton French Language School Board. If you would take your places, please, for the Hansard record, I will ask that you introduce yourselves.

CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON

OTTAWA-CARLETON FRENCH LANGUAGE SCHOOL BOARD

M. Lalonde: Je suis Aurèle Lalonde.

M. Bégin: Fernand Bégin de la section catholique.

M. Racle: Gabriel Racle, président de la section publique.

M. Lalonde: Madame la Présidente, distingués membres du comité, nous vous remercions

de nous avoir donné l'occasion de nous exprimer en matière de financement de l'éducation et, plus particulièrement, de vous faire connaître nos réactions, comme Conseil scolaire de langue française d'Ottawa-Carleton, aux projets de loi 64 et 65 adoptés en deuxième lecture par l'Assemblée législative de l'Ontario le 19 octobre 1989.

D'aucuns ont affirmé qu'il ne servait à rien d'opposer une réaction, puisque les dés étaient jetés. C'est cependant avec confiance et respect pour votre comité que nous nous présentons devant vous.

Vous connaissez bien la constitution de notre conseil : deux sections habilitées à percevoir des taxes et des subventions ministérielles et un conseil plénier composé des membres des deux sections.

A titre de président du Conseil scolaire de langue française dans sa dimension dite conseil plénier, je veux vous souligner que les sections doivent financer les dépenses du conseil plénier, comme le prévoient les paragraphes 39(1) et 39(2) de la Loi 109. En effet, ceux-ci prévoient, et je cite, que :

« Chaque année, le conseil plénier prépare et adopte les prévisions des sommes nécessaires dans son domaine de compétence au cours de l'année, pour les besoins des écoles élémentaires et des écoles secondaires respectivement.

« Le conseil plénier affecte ses prévisions à la section publique et à la section catholique dans le rapport qui existe entre l'effectif quotidien moyen dans les écoles de la section intéressée et l'effectif quotidien moyen dans toutes les écoles du conseil de langue française. »

Ces dispositions législatives ont pour conséquence que la santé financière du conseil plénier et, du même coup, la qualité des services qu'il rend sont entièrement subordonnées à la santé financière de l'une et l'autre section. Soulignons en passant que la contribution de chacune se fait en fonction des effectifs scolaires, ce qui est là une base équitable.

Les sections vous feront connaître dans un instant leur points de vue respectifs. Je tiens auparavant à vous souligner que, adoptés sous leur forme actuelle, les projets de loi 64 et 65 auraient une plus grande équité pour l'ensemble des élèves de la province et de notre conseil, mais qu'ils maintiendraient néanmoins une disparité totalement inacceptable. Imaginez un instant que, à l'intérieur d'un seul et même conseil, le nôtre, l'une et l'autre section n'aient pas une capacité financière analogue pour offrir à leur clientèle des services éducatifs comparables.

Je vous pose donc la question suivante : Quand verra-t-on enfin les réalités du slogan ministériel : "Equal educational opportunity for all students in Ontario"? Ce slogan, nous y croyons, nous y tenons à l'intérieur même de notre conseil scolaire.

M. Bégin : La section catholique du Conseil scolaire de langue française d'Ottawa-Carleton tient à remercier le Comité permanent des affaires sociales de l'Assemblée législative de l'Ontario d'avoir pris l'initiative de tenir cette audience dans le but de solliciter l'opinion des conseils scolaires sur les projets de loi 64 et 65.

La section catholique se rallie aux principes directeurs que poursuit le gouvernement : l'égalité des chances en éducation ; et, la répartition équitable du fardeau fiscal entre les contribuables ontariens.

Les projets de loi 64 et 65 proposent des mécanismes qui tentent d'actualiser les principes qui nous tiennent à cœur. Les racines de ces mécanismes sont ancrées dans l'histoire même de notre province. Tel que souligné dans le rapport Macdonald, l'égalité des chances et l'équité fiscale favorisaient davantage certains conseils scolaires. Un nouveau chapitre s'est ajouté à l'histoire de la province en matière d'éducation lorsque les Franco-Ontariens ont dû avoir recours à notre système judiciaire, dans le but de faire confirmer les garanties constitutionnelles reconnues à ceux-ci par les dispositions de l'article 23 de la Charte canadienne des droits et libertés.

Les décisions du juge Sirois dans la cause Marchand contre le Conseil scolaire de Simcoe et la cour d'appel, dans le Renvoi dans l'affaire de la Loi sur l'Éducation de l'Ontario, abondent en faveur d'un traitement égal et juste pour les minorités linguistiques. Le financement équitable de l'éducation des Franco-Ontariens fait partie de cette justice. Le gouvernement de l'Ontario doit tenir compte de ces réalités au moment de l'adoption des projets de loi 64 et 65.

La partialité dans l'équité fiscale et les disproportions dans l'égalité des chances sont reconnues et documentées et, malheureusement, malgré une certaine amélioration, se poursuivent si les projets de loi 64 et 65 ne sont pas modifiés à temps.

La section a évalué sa capacité de rencontrer les coûts de prestation de ses services tel que définis dans les programmes prescrits par le ministère de l'Éducation.

Dans un premier temps, il est impérieux de reconnaître que la base d'évaluation de la section catholique réduit singulièrement sa capacité de

satisfaire aux coûts de l'éducation et, par le fait même, porte entrave à l'équité. Ne possédant pas, et de loin, une assiette comparable à celles des conseils limitrophes, elle se voit encore une fois pénalisée, privée de recettes qui lui sont dues.

Le tableau un ci-contre démontre clairement ce fait. Nous vous demandons d'examiner attentivement les données en pourcentage sous l'entête « Section catholique » du tableau, que vous retrouverez dans le rectangle. Je vous fais grâce de ce tableau, qui parle par lui-même. Vous voyez la disproportion lorsqu'arrive la représentation en pourcentage du côté des taxes résidentielles et commerciales parmi les cinq conseils de la région.

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Les conséquences inévitables de cette inégalité engendrent des hausses de taxes susceptibles de mener à la perte des contribuables qui trouveraient le fardeau trop lourd et mal partagé.

Conscient des inégalités, le gouvernement propose, dans les projets de loi 64 et 65, un mécanisme de répartition de l'évaluation industrielle et commerciale selon le même rapport que celui qui existe entre l'évaluation résidentielle et agricole, imposée et évaluée aux fins des écoles séparées de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, et cela, respectivement.

Devant l'obligation d'offrir une qualité comparable de service – question qui fût abordée par les tribunaux ; on n'a qu'à se référer à la cause *Marchand* – la section est forcée d'encourir des dépenses supérieures à son plafond. Le mécanisme de répartition de l'assiette est boiteux. Il porte atteinte à l'accomplissement du mandat de la section. L'objectif d'équité est alors sérieusement entravé. Le mécanisme doit être corrigé ou remplacé.

Nous avons une recommandation en ce sens-là qui est comme suit : afin de corriger cette anomalie, nous recommandons que le paragraphe 18a(3) du projet de loi 65 soit amendé, afin que la répartition de l'assiette d'évaluation soit fondée sur les effectifs scolaires.

Le tableau deux, qui suit, compare la répartition de l'assiette d'évaluation industrielle et commerciale des sociétés ouvertes sur la base de l'évaluation résidentielle et agricole et celle sur la base des effectifs quotidiens moyens.

Par exemple, si vous prenez les conseils scolaires et l'évaluation résidentielle et agricole pour le Conseil scolaire de langue française de la section catholique, vous verrez que, d'une part, le pourcentage à partir de l'évaluation résiden-

tielle et agricole est à peu près triplé lorsque l'on prend les effectifs scolaires. Pour la région d'Ottawa et également pour la région de Carleton on passe de 6,71 pour cent à 15,73 pour cent de l'assiette fiscale.

La modalité de répartition proposée dans les projets de loi 64 et 65 ne concorde pas avec le principe de la répartition équitable du fardeau fiscal entre les contribuables ontariens. La répartition en fonction des effectifs scolaires répond mieux à ce principe sans toutefois être parfaite.

Le système public anglophone n'est plus seul avec le mandat d'offrir des programmes et des services à tous les élèves. Pourtant, il demeure toujours favorisé par le processus d'énumération qui est injuste aux francophones et aux catholiques. Nous tenons à vous signaler que le processus d'énumération, dans son application, porte préjudice envers les francophones. Présentement, les impôts des contribuables qui ne sont pas spécifiquement désignés sont automatiquement affectés aux écoles anglophones publiques.

Les francophones ne tolèrent plus cette anomalie et, comme première étape d'intervention, vous demandent de corriger cette situation en vous recommandant que l'évaluation d'une personne morale d'une municipalité qui n'est pas spécifiquement désignée aux fins des écoles publiques ou séparées soit répartie équitablement, basé sur le nombre d'élèves. Les tribunaux ont même appuyé le concept d'équivalence de services aux systèmes publics et catholiques, anglophones et francophones.

Un mode de mise en commun des évaluations fondé sur les effectifs résidents internes et externes serait beaucoup plus facile à administrer. Chaque école, chaque conseil scolaire possède déjà toutes les données et les statistiques qui permettraient facilement d'identifier le rapport d'effectifs de chaque conseil à l'intérieur d'une même municipalité.

Nous soutenons donc que le processus d'identification par municipalité selon les effectifs des conseils scolaires est plus facile à administrer que le modèle proposé par le gouvernement dans les projets de loi 64 et 65. Les dépenses d'un conseil, rappelons-nous, sont étroitement dépendantes des effectifs scolaires. Les revenus devraient l'être tout aussi bien.

M. Racle : La section publique du Conseil scolaire de langue française d'Ottawa-Carleton est heureuse de participer au processus de consultation publique sur les projets de loi 64 et 65, et je vous remercie de nous avoir accordé ce temps d'échange.

Récemment, la section publique a présenté au Comité spécial de l'éducation un mémoire relatif à l'ensemble du financement de l'éducation en Ontario. Etant donné le temps restreint mis aujourd'hui à notre disposition, je ne vous referai pas le contenu de ce mémoire; pas plus, d'ailleurs, que je ne vous lirai entièrement le texte du mémoire que nous vous présentons aujourd'hui, me contentant de souligner quelques points essentiels.

Le premier, qui sert de base, d'ailleurs, au cadre de notre réaction aux projets de loi 64 et 65, est le suivant: Nous insistons pour que, dans toute révision du financement de l'éducation, les conseils scolaires et les écoles soient pourvus des ressources suffisantes pour accomplir leur tâche et leur mission.

Nous reconnaissons l'effort du gouvernement pour assurer une plus grande équité dans la répartition de l'assiette fiscale et, par conséquent, dans le financement de chaque conseil scolaire de la province. Nous ne pouvons que féliciter le gouvernement de tenter d'améliorer la situation existante, mais nous croyons toutefois que les projets de loi à l'étude sont insuffisants pour établir une équité réelle, en particulier pour la section publique du Conseil scolaire de langue française d'Ottawa-Carleton.

Jusqu'en 1988, les francophones du secteur public jouissaient de plein droit des impôts commerciaux et industriels au sein des conseils publics d'Ottawa et de Carleton. Depuis l'avènement du Conseil scolaire de langue française, nous avons, à toutes fins pratiques, perdu l'accès à cette source de financement. Nous reconnaissons que les projets de loi nous permettent d'obtenir une partie de ces impôts; néanmoins, il ne touche pas le fond du problème.

En répartissant les impôts commerciaux et industriels sur une base d'impôts résidentiels et agricoles, le gouvernement nous maintient dans un état d'inégalité. Diverses associations francophones ont déjà fait part au gouvernement de l'inéquité découlant du processus de recensement des contribuables francophones individuels, aussi bien que des sociétés en nom collectif. Je ne reviendrai pas sur cette question.

Par ailleurs, il est notoire que, au niveau socio-économique, la population francophone a un rattrapage historique à effectuer et que les impôts résidentiels et agricoles des contribuables francophones produiront une somme moindre par contribuable en comparaison avec la population en général. N'est-il donc pas ironique que, d'un côté, le gouvernement crée un Conseil scolaire de langue française pour favoriser la

situation des francophones et améliorer leur sort et que, d'un autre côté, il met en place un système de financement qui les défavorise parce qu'il est proportionnel à la richesse de base?

En effet, plus les contribuables résidentiels d'un conseil sont riches, plus celui-ci recevra des impôts commerciaux et industriels; plus la population d'un conseil est défavorisée, plus celui-ci sera pauvre. Autrement dit: plus on en a, plus on va en obtenir.

De plus, la situation à Ottawa-Carleton s'avère tout à fait particulière. Selon les dispositions du projet de loi 109 de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton, les élèves ont un droit d'accès universel entre conseils publics limitrophes au palier élémentaire; et entre les conseils publics et séparés, tant francophones qu'anglophones, au palier secondaire.

Il n'existe donc plus à Ottawa-Carleton des liens historiques étroits entre l'accès aux écoles et l'exigence d'être contribuables au système scolaire responsable des écoles. Notre situation à nous, section publique, est tout à fait unique dans la province car, à la limite, nous pourrions avoir beaucoup d'élèves et très peu de contribuables.

Etant donné les difficultés inhérentes au processus de recensement, nous avons présentement un nombre substantiel d'élèves dont les parents sont contribuables d'un autre système scolaire mais qui ont le droit d'accès à nos écoles. Nous sommes ouverts pour les accueillir et nous voulons respecter le droit individuel, accordé par la loi aux parents, d'appuyer le système de leur choix. Mais comment pourrions-nous transformer ces parents en contribuables de notre section publique?

Nous aimerions aussi attirer votre attention sur un document de questions et réponses préparé par le gouvernement, pour expliquer les dispositions des projets de loi 64 et 65. Dans ce document on peut lire ceci: «Le gouvernement prend également en considération le fait que le système d'écoles publiques a un mandat plus large qui est d'offrir des programmes et des services d'éducation à tous les élèves. Cette nouvelle politique reconnaît donc la plus grande portée de ce mandat des écoles publiques, tout en mettant en oeuvre un mode plus équitable de répartition de l'assiette fiscale locale.»

Nous sommes très heureux que le gouvernement reconnaisse le mandat plus large du système d'écoles publiques, mais nous aimerions aussi que le gouvernement reconnaisse que la section publique du Conseil scolaire de langue

française d'Ottawa-Carleton est un système d'écoles publiques.

Nous avons beaucoup de difficultés à comprendre pourquoi notre langue fait que nous perdons notre qualité de conseil public. Si le gouvernement accepte les conséquences de ses énoncés, s'il est logique avec lui-même, il se doit de modifier les projets de loi 64 et 65 pour reconnaître la section publique du Conseil scolaire de langue française d'Ottawa-Carleton de plein droit comme un système d'écoles publiques et non comme un système dissident.

Lors de la création du Conseil scolaire de langue française, le gouvernement s'est engagé à fournir les ressources financières nécessaires pour que les francophones puissent continuer à jouir d'une qualité d'éducation équivalente à celle offerte dans les conseils scolaires d'origine : les conseils publics, en ce qui nous concerne. Les dispositions des projets de loi 64 et 65 ne respectent pas cet engagement. Elles sont nettement insuffisantes.

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La section publique remet également en question l'à-propos d'une répartition purement locale. Le Conseil scolaire de langue française dessert l'ensemble de la population de la municipalité régionale d'Ottawa-Carleton. Ayant une plus forte représentation de la taxe résidentielle dans les villes de Gloucester et Cumberland, il serait avantageux pour la section d'encourager tout nouveau commerce à s'installer dans ces municipalités. Nous serions alors tentés de nous interposer dans les projets de développements industriels des diverses municipalités, afin d'augmenter nos revenus commerciaux et industriels dans ces endroits ; d'autant plus que la croissance résidentielle des vingt prochaines années se fera dans les municipalités entourant la ville d'Ottawa.

Le besoin de services éducatifs s'accroîtra dans ces municipalités. Mais la croissance des emplois s'effectuera à Ottawa. Ce sont les résidents des municipalités environnantes qui oeuvrent à Ottawa et qui font vivre un grand nombre des commerces du centre-ville. Nous croyons qu'il serait plus approprié de répartir les revenus produits par les impôts commerciaux et industriels sur l'ensemble du territoire que nous desservons, pour ainsi aider la population qui génère les revenus du centre-ville.

Enfin, la section publique remet en question la pertinence de traiter différemment les impôts en provenance des sociétés en nom collectif. Il nous apparaît plus légitime de traiter ces commerces ou sociétés sur la même base que les autres

commerces. Sinon, le gouvernement ne fait qu'exacerber l'inéquité due au processus de recensement inadéquat.

Comme je viens de l'indiquer, les projets de loi 64 et 65 ne vont pas, pour nous, au coeur du problème de financement. Je me permets de vous renvoyer, encore une fois, au mémoire présenté le 19 septembre 1989. Je voudrais rappeler qu'une augmentation substantielle des plafonds pour les dépenses ordinaires approuvées aiderait davantage à réduire l'inéquité que toute autre mesure gouvernementale.

Il est aussi essentiel que le gouvernement révise la définition d'un francophone ainsi que le processus de recensement et de désignation des impôts scolaires. Votre comité doit comprendre toute l'importance pour nous d'avoir en place, dans des mesures permanentes, une structure de financement qui nous permette de gérer efficacement notre système scolaire et d'offrir une éducation de qualité équivalente à celle offerte par les conseils publics anglophones d'Ottawa et de Carleton, tout en soulignant qu'il est également essentiel que le gouvernement reconnaisse nos besoins pressants de financement en immobilisation, d'où les recommandations qui sont jointes à la fin de ce mémoire et que je lirai rapidement.

A savoir :

- que le gouvernement reconnaisse pleinement la section publique du Conseil scolaire de langue française d'Ottawa-Carleton comme un conseil d'écoles publiques ;

- que les plafonds pour les dépenses ordinaires approuvées soient augmentés de façon substantielle pour atteindre une équité dans le financement ;

- que la définition d'un francophone soit révisée ;

- que soient révisés les lois, les règlements relatifs à la désignation de soutien scolaire et les mécanismes de mise en oeuvre en découlant ; pour que tous les contribuables soient obligés de désigner leur soutien scolaire ; pour que la prédominance de la langue anglaise soit éliminée dans le cas de copropriétaires ou de colocataires ; et pour que tous les impôts résidentiels et agricoles non désignés spécifiquement soient partagés parmi les conseils scolaires limitrophes sur une base proportionnelle au nombre d'élèves inscrits dans les écoles de chaque conseil scolaire ;

- que tous les impôts commerciaux et résidentiels soient répartis entre les conseils scolaires de la municipalité d'Ottawa-Carleton sur une base proportionnelle au nombre des élèves inscrits

dans les écoles de chaque conseil scolaire et qu'un facteur de pondération soit établi, afin de permettre à la section publique de maintenir ses services au niveau des conseils publics de la région d'Ottawa-Carleton, compte tenu du fait que le nombre d'élèves de la section publique ne lui permet pas actuellement d'obtenir les revenus suffisants à cette fin ;

que des fonds compensatoires soient offerts à la section publique du Conseil scolaire de langue française, de la même manière qu'ils vont être offerts aux conseils publics de langue anglaise afin qu'aucune inégalité ne soit créée entre des conseils publics ; et enfin,

que le gouvernement respecte l'engagement énoncé par le ministre de l'Éducation, lors du dépôt du projet de loi 109, à l'effet que des subventions temporaires spéciales seront accordées qui permettront aux sections du nouveau conseil d'offrir une éducation de qualité égale à celle que recevaient les élèves francophones dans leur conseil d'origine, et que ces subventions temporaires soient versées tant et aussi longtemps qu'une refonte plus fondamentale du financement de l'éducation n'aura pas été complétée.

C'est là le sens du message que j'ai livré en commençant : Nous insistons pour que, dans toute révision du financement de l'éducation, les conseils scolaires et les écoles soient pourvus des ressources suffisantes pour accomplir leur tâche et leur mission. Ceci doit aussi s'appliquer à la section publique du Conseil scolaire de langue française d'Ottawa-Carleton.

M. Grandmaitre : J'ai déjà eu le plaisir et l'honneur de rencontrer ces gens à Ottawa lors d'une rencontre avec le caucus d'Ottawa-Carleton. Je connais très bien les difficultés auxquelles les deux sections font face. Par contre, je crois que, depuis la présentation du projet de loi 109, du projet de loi 30 et du projet de loi 75, le gouvernement de l'Ontario a vraiment fait de grands pas pour éliminer les problèmes qui existent, non seulement dans Ottawa-Carleton, mais partout dans la province.

Je dois féliciter ces gens qui travaillent d'arrache-pied. Il n'est pas facile, même dans Ottawa-Carleton, d'établir un nouveau conseil comme le Conseil scolaire de langue française d'Ottawa-Carleton. Je suis sûr que le gouvernement va continuer, non seulement à vous écouter, mais à agir comme il l'a fait dans le passé. Maintenant, permettez-moi une petite question pour donner l'occasion à tout le monde de dire son mot.

Tantôt, vous avez mentionné, Monsieur Racle, le formulaire pour identifier le francophone et l'anglophone et tous ces gens-là. Maintenant nous avons apporté des modifications à ce formulaire-là, à ce questionnaire ; est-ce que vous en êtes au courant ? Est-ce que vous avez vu le nouveau formulaire ?

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M. Racle : Je n'ai pas vu le nouveau formulaire, mais nous souhaiterions que chaque contribuable, qu'il soit de langue anglaise ou de langue française, doive suivre le même processus ; c'est-à-dire, qu'il s'identifie comme étant soit pour une langue, soit pour l'autre.

M. Grandmaitre : C'est garanti.

M. R. F. Johnston : C'est garanti ? Cela est nouveau.

J'ai essayé, dans mon discours en deuxième lecture, de parler de certains problèmes. Mais ce serait mieux d'avoir le bon français pour m'exprimer là-dessus aujourd'hui, parce que j'ai des problèmes même dans un français ordinaire ; je n'ai pas de français aussi spécialisé que le demande le financement de l'éducation.

Je suis un peu étonné d'entendre aujourd'hui qu'il existe encore des problèmes ici, parce que M. Grandmaitre m'avait dit que, après la réunion qui a eu lieu récemment à Ottawa, tous les problèmes étaient tout à fait réglés maintenant, non ? Moi, je pensais que tout le monde était totalement heureux à Ottawa avec le système de financement de l'éducation dans cette région mais aujourd'hui, j'ai entendu le même genre de mémoire que nous avons reçu au Comité spécial de l'éducation ; mais je ne veux pas trop taquiner le député.

J'aimerais quand même poser une question concernant la recommandation 8 ; c'est peut-être la chose la plus importante pour le moment. C'est la dernière recommandation à la page 9 du mémoire de la section publique du conseil, où vous mentionnez les subventions temporaires spéciales pour le conseil scolaire. Plusieurs des problèmes que vous avez identifiés ne sont pas inclus dans ce projet de loi. Vous avez parlé de recensement et de la méthode de baser notre système de taxe commerciale et industrielle.

Ce n'est pas exactement quelque chose que le gouvernement changerait en quelques jours avec ce projet de loi, je pense. Mais vous avez un problème immédiat avec le financement quotidien de votre système d'éducation et peut-être que, avec la recommandation 8, on attend un grand changement dans notre système de finan-

cement. Cela peut vous aider peut-être plus que les autres choses que vous avez mentionnées. J'ai raison, ou est-ce que j'ai totalement tort ?

M. Racle : Oui, c'est-à-dire, je crois que —

Mr Keyes : What page?

Mr R. F. Johnston : Recommendation 8 on page 9 of the public sector, the last recommendation that was read.

M. Racle : — le problème que nous avons c'est que l'ancien ministre de l'Éducation (M. Ward), lors du dépôt de projet de loi 109, s'est engagé à ce que la qualité des services que nous offrions, qui étaient offerts dans les conseils d'origines aux francophones, soit la même.

Or, nous avons une nécessité que cette qualité soit la même et nous tenons à ce qu'elle soit la même. Pour ce faire, nous avons besoin, effectivement, que le gouvernement subventionne nos besoins car autrement nous ne pourrions pas nous maintenir au même niveau. Ceci me semble extrêmement important.

Par ailleurs, en relation avec ce que vous venez de dire, c'est-à-dire, les problèmes que nous avons mentionnés concernant l'identification des contribuables, pour nous le système de répartition de la taxe commerciale et industrielle est étroitement lié à cette question-là car, si nous avons peu de contribuables, nous aurons peu de revenu. Donc, pour nous, il est impossible de dissocier les deux choses. Ce que nous voulons dire au gouvernement c'est que, pour que ce système fonctionne un peu mieux, même s'il n'est pas satisfaisant, il faut complètement réviser cette question-là, car autrement on maintient un système qui est tout à fait inéquitable pour nous.

M. R. F. Johnston : Je ne suis pas absolument certain de votre position finale sur les projets de loi. Vous en êtes en faveur, mais vous aimeriez voir des changements ou vous aimeriez recommencer avec un autre projet de loi qui toucherait les effectifs de base, etc. Je ne suis pas absolument certain si vous pensez que nous pouvons changer ces projets de loi avec quelques amendements spécifiques, ou s'il faut recommencer à nouveau.

M. Racle : Si la répartition se faisait selon les effectifs, ce serait une amélioration par rapport à ce qui nous est proposé. Cela ne résoudrait pas entièrement nos problèmes, mais ce serait déjà un pas dans la bonne direction.

M. Bégin : Justement, si on retourne à ce qui est proposé au tableau deux pour notre section, basé sur les effectifs scolaires... Vous voyez que je ne me suis pas attardé trop longtemps ; j'étais

trop conscient du temps, j'ai l'impression. Mais si vous regardez les différences que ça suppose, pour la situation d'Ottawa-Carleton, j'entends, de baser ça sur les effectifs plutôt que de baser ça sur les taxes résidentielles et agricoles, vous pouvez voir que l'on triple les chiffres.

Vous voyez qu'un conseil scolaire comme, par exemple, la section catholique du Conseil scolaire d'Ottawa-Carleton — j'ai des chiffres ici — donc, notre section, la section catholique, a à peu près 14 000 élèves. Si vous prenez le Carleton Roman Catholic School Board ou l'Ottawa Roman Catholic Separate School Board, il y a 14 000 élèves. Les écoles séparées d'Ottawa en ont 19 000 ; ceux d'Ottawa séparés en ont 9 600. On est à peu près à mi-chemin du côté du nombre d'élèves.

Si maintenant vous comparez les chiffres qui sont là : le Carleton Board of Education en a 42 000 et puis le Ottawa Board of Education en a 28 000. Carleton est très fort avec 42 000 ; ensuite, c'est 28 000, 19 000, 14 000 pour nous et 9 000, et 5 000 pour la section publique.

Quant aux proportions, si vous avez le nombre d'élèves en tête et que vous comparez avec les chiffres qui sont là, du côté des équivalents moyens, vous voyez que le nombre d'élèves est de 6 000, 2 000, 9 000 et 39 000. Regardez la disproportion qu'on a, d'une part dans le tableau de gauche, dans les pourcentages. Si le nombre était basé sur les équivalents moyens, le nombre d'élèves et les effectifs scolaires, cela serait le triple dans la plupart des cas vis-à-vis du nombre d'élèves que l'on dessert.

Et c'est pour ça que M. Racle dit que, comme on le dit de notre côté, ce que nous offrons comme amendements aux projets de loi 64 et 65 du côté des effectifs scolaires, c'est vraiment une atteinte beaucoup plus sérieuse, sur le plan de l'équité, que celle qui est proposée dans la réforme de ces projets de loi. Est-ce que vous comprenez ?

M. R. F. Johnston : Oui, absolument. Cela m'intéresse beaucoup comme changement, la façon de financer le système en totalité aussi. Mais maintenant ce que l'on propose, c'est un changement du principe. Ce n'est pas seulement un petit amendement ; on parle d'un grand changement. Je pense que le gouvernement n'est pas encore prêt pour cette sorte de changement, mais peut-être que j'ai tort ; je ne le sais pas. Monsieur Keyes, vous êtes l'adjoint parlementaire. Est-ce que le gouvernement considérerait cette sorte de changement ? Cela change, à mon avis, l'un des principes fondamentaux du projet de loi.

Mr Keyes: I am not aware at the present moment whether the government is looking at that major change outside of this particular bill. If Brian Lenglet is still here, if he does not have to leave, perhaps he can do it or someone else might come to the table and comment on that.

Mr Bowers: I think one of the things one would have to say in response to that question as to how the taxes will be split is that at the moment there are a number of cases before the courts that prevent officials of the ministry from making statements on behalf of the minister that would have some effect on those court cases. It would not be appropriate at this time to comment because of that.

Mr R. F. Johnston: I certainly would not want to put a civil servant in that position, but if we could have a law coming forward at the same time as we have these things before the courts, surely some politician over there could make some comment on it.

Il y a une autre réponse, je pense.

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M. Bégin : Juste pour finir, je ne voudrais pas m'attarder trop longtemps là-dessus et prendre trop de votre temps. On parle du projet de loi 109 et des modifications proposées à ce projet de loi, et on parle de la région d'Ottawa-Carleton.

M. Grandmaitre a mentionné le nouveau questionnaire, une reformulation, que je n'ai pas vue. Même avec la reformulation, en ce qui concerne l'identification des contribuables anglophones, francophones, etc., il y aura ceux qui ne répondraient pas au questionnaire, et il reste toujours la possibilité que des questionnaires ne se fassent pas retourner, ou qu'ils soient retournés et qu'il reste encore un problème d'identification.

Nous ce qu'on propose, en ce qui concerne les effectifs scolaires et en se basant là-dessus — cela ne va pas à l'encontre, par exemple, de ceux qui ne sont pas identifiés et ceux qui ne se seraient pas identifiés, peu importe la nouvelle question ou la nouvelle reformulation dans le projet de loi 65, où tout ce qui n'est pas identifié, selon 93 et 23 — c'est une répartition équitable dans les cinq conseils de la région par un fonds commun.

Ces gens-là, dans un fonds commun, seraient répartis au sein des effectifs scolaires. Donc, ça résoudrait le problème même si jamais il n'y avait pas de modifications du questionnaire comme tel.

M. R. F. Johnston : Nous avons les chiffres concernant les changements que cela pourrait apporter dans votre région, si on utilisait cette

sorte de méthode. Le gouvernement a-t-il fait des études concernant les différences entre les deux systèmes, catholique et public, dans le reste de la province, si on utilisait cette sorte de principe ? J'ai dit que l'on verrait peut-être la même sorte de changements.

Did you do any studies? Do you know, Ken?

Mr Keyes: I am not aware of any.

M. R. F. Johnston : Cela est peut-être la raison pour laquelle on ne veut pas avoir cette sorte de changements, parce qu'on ne parle pas seulement de 100 millions de dollars dans la province mais peut-être dans chaque région, si on a cette sorte de répartition. Cela est une grande question politique pour le gouvernement. C'est peut-être ça la raison, je ne le sais pas. Mais le principe de modification d'un financement égal et équitable dans notre province m'intéresse beaucoup.

The Vice-Chair: I would like to thank the Ottawa-Carleton French Language School Board for appearing. Because we have a vote later on today and the next group is ready, I will have to thank you very much for your presentation.

If the Cochrane-Iroquois Falls Black River-Matheson Board of Education would come forward, please, I thank you very much for appearing before us today. First of all, please introduce yourselves for the record and then make your presentation. Would the people at the back of the room kindly take their conversations outside so we can proceed? Thank you very much.

COCHRANE-IROQUOIS FALLS BLACK RIVER-MATHESON BOARD OF EDUCATION

Mr Michon: Raymond Michon, director of education.

Mr Peterson: Barry Peterson, accountant.

The Vice-Chair: Thank you. Would you like to go ahead with your presentation at this time?

Mr Michon: Thank you for the opportunity to address the standing committee on social development regarding pooling. Now that you know where our board is, you are most welcome to come and try your ability at skiing. Skiing up there is really good where we are eight months of the year and not bad for two. So feel welcome to come.

We presently operate two small mixed secondary schools. I should add, at this stage, the reason they are mixed secondary schools, French and English, and we do not operate a French-language school, is that the coterminous board

has a Roman Catholic French-language school in our own buildings.

We have five elementary schools and one school for the trainable mentally retarded. Later on, when we talk about equity, you will see that the cost for developmentally handicapped is approximately \$23,000 per pupil.

Our student population is 1,306 in elementary and 965 in secondary.

We believe that the ministry has set its existing funding formula to respect the local autonomy of each school board to establish priorities in order to respond to local needs. Local autonomy includes the right to raise the necessary taxes from ratepayers to provide quality education. To respond to local needs, our board has to spend above provincial ceilings.

If pooling, Bill 64, were presently in force, the Cochrane-Iroquois Falls Black River-Matheson Board of Education's share of commercial and industrial assessment would be reduced to 56.5 per cent, resulting in a loss of \$38.4 million in equivalent residential assessment. The dollar value of a mill drops from \$113,719 to \$75,000. This represents a 34 per cent reduction in the board's ability to raise taxes. By the way, this does not take into account the extension of the Roman Catholic separate school board boundaries.

Our board in 1989 will operate approximately \$1,252 per pupil above provincial ceilings. This represents an overceiling amount of some \$2.3 million. To finance this amount with the reduced tax base would require an additional 10 mills, or a 23.95 per cent increase.

This board has continually striven to meet the needs of its communities and the initiatives set down by the past and present governments: community use of schools, special education, co-operative education, extension of full funding to Roman Catholic school boards, affirmative action, pay equity, drug education and so on.

Some initiatives are accompanied by incentive or conditional grants that require our board to dig deeper and deeper into the local taxpayer's pocket. The board, through excellent financial management and additional taxation, is providing quality education, often in spite of the political system, which all too often leaves a small northern board completely vulnerable.

Quality education has been possible only because of the availability of the commercial and industrial assessment which has effectively been used to cushion a most necessary overceiling amount. Pooling of assessment without guaran-

teed reimbursement for financial loss would make this impossible.

This board has co-operated and is co-operating fully with its coterminous board in the implementation of Bill 30. We share with the Roman Catholic separate school board our two small secondary schools, purchase and sell services, and share teachers. Both boards are attempting to respond to the needs of their communities. The boards have managed, to date, to keep our small communities united. However, since the extension of full funding, there is a growing perception among public school supporters that the public system's financial and human resources keep diminishing in a nonequitable fashion.

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We keep reminding our public that the last government, the government of the day, past ministers of education and the present Minister of Education (Mr Conway) promised that the public boards would not suffer because of the extension of full funding to the Roman Catholic separate school boards. Today, with the advent of Bill 64, we hear the same thing. Mr Conway's statement in the Legislature repeated the original promise of the then Minister of Education, the member for Wentworth North (Mr Ward) that grants will be increased to ensure that the public school system on a province-wide basis does not suffer a loss of revenue as a result of these changes and no public school board would experience a net loss of revenue as a result of these changes.

To our knowledge, that guarantee is not presently incorporated in Bill 64. It is only rhetoric, not a fact. If our government is sincere in guaranteeing that no public school board will experience a net loss, that guarantee should be legislated.

The board, based on the stated financial guarantee, was again ready to attempt the implementation of what the legislators perceive as being equal for the masses. We trust that the minister is attempting to achieve equity in educational financing. However, we must remind the minister that equity does not mean equality. The fact is that the public board has a mandate to provide quality education for all elementary and secondary schoolchildren, irrespective of religious background. This mandate and its financial implications are significantly different from that of our coterminous Roman Catholic separate school boards.

As we stated in the foregoing, even though there is scepticism, the coterminous boards in the Cochrane-Iroquois Falls Black River-Matheson area have managed to keep our small communi-

ties united. We unfortunately submit that unless the guaranteed assistance to our board to offset the drastic effects of pooling becomes a reality, resentment will grow.

Our board disagrees that pooling will result in equity, but with sound financial planning and with a legislated, and therefore a guaranteed, buffer of a minimum of six years, we can attempt to keep damages to a minimum. However, how can we plan if we do not have a guarantee? Without the legislated guarantee, our board's ability to effectively and efficiently respond to local needs will be seriously curtailed and the board's ability to guarantee our students a quality education will be seriously compromised.

I guess the only people we can turn to are you, and we need your help. Our board cannot afford to lose \$38 million in assessment, or 34 per cent of our tax revenue, and maintain quality education. We would ask you to insist that the minister legislate his promise that no public school board will experience a net loss of revenue.

The Vice-Chair: Thank you very much for presenting your concerns very clearly.

Mr Allen: I want to thank the Cochrane-Iroquois Falls Black River-Matheson Board of Education—that is quite a handle—for coming before us this afternoon.

You have given us the percentage of loss in your ability to raise taxes as a result of the pooling arrangement. Is there a figure I have missed here? Can you give us the overall deficit that you face? I gather you have done calculations on the year 1989, as distinct from the tables, so you have gone beyond what the table that the ministry gave to you provides. If you have done that and you calculate your net loss after all the adjustments, through the formulas and balancing acts performed under the formulas, are you worse off or better off than the original calculations would indicate?

Mr Peterson: I would say that we are worse off. I think what we are trying to say is we are willing to try to implement this legislation. However, without a guarantee, how can we plan? We quote a number of \$1,252 over ceilings. That has come about because of good financial management and that is what we require.

We require a guarantee that we can go back to our trustees, we can go back to our communities, and say, "Based on a guaranteed situation, yes, maybe we will have to increase your mill rates, maybe we will have to make drastic cuts, but they will only be made to guarantee quality education." As such, the overall impact is, in our case,

supporting the overceiling amount. That is our major concern.

When you operate dual systems at elementary schools, you have a French immersion stream as well as a regular stream. Right now I consider the separate school board in our area, to quote financial terms, a minority shareholder in our board. Some 230 of the students who we quote as being enrolled, of 965, are from our other board. Those are the separate school supporters who send their children to our school.

We have a dual program at high schools. We have both French and English offerings. We end up with small class sizes. This is a necessity to provide the quality education. Given the time to manage it, we hope that we will not have to make drastic cuts without making them in the least affected areas. The ability to plan ahead is the necessary thing.

I think what we are more worried about is the fact that a verbal guarantee is no guarantee. That is the problem. How can we, say, sit and leave it to the political system that may change over that six-year period significantly enough to put us, again, behind the eight ball? How are we going to plan? That is what we are looking for.

With a legislated guarantee, you can plan. Whether it be good or bad, we can assist in the implementation of this pooling. I think that is what we are trying to drive home—that we need that guarantee. Ray, would you like to comment on that?

Mr Michon: That is fair.

Mr Allen: This brief, like the last one, refers to comparisons in mandates in terms of the provision of quality education, equality of education, equity in education, currently delivered education—various changes of language. I am not quite sure whether these terms are being used interchangeably or not.

Just so that we know what your comparative situation is with respect to the coterminous board, are they also spending overceiling? What is their situation in that regard, and if so, roughly how much?

Mr Michon: To my knowledge, they are not spending overceiling.

Mr Peterson: No, and to our knowledge they do not plan to. What will happen is that we are going to lose a part of our tax base. If the other boards, the separate boards, do not pick up and operate in a similar manner, manage that overceiling amount and provide better education because that has been established, in effect, we are going to lose a bit of our tax base because they will not take advantage of it.

That is for them to do in the future. That is not for me to say, but right now we kind of understand they do not have a plan to operate overceiling. So we have built this up. In the small, northern community, it was necessary; there is no question of it.

Mr Michon: To carry on with your point, we mentioned the small secondary schools. You are looking at OACs with four and five students. That is very expensive education. Our communities are spread out. We have 150 kilometres from one end of our board to the other, with small communities, small elementary schools. If you offer French immersion in Cochrane, why do you not offer it in Matheson. Are you going to bus the students 60 miles or 90 kilometres? It does not make sense.

Again, you are offering small classes, 11 or 12 students in grades 1 and 2, grades 3 and 4. This is the area, and of course you have heard it before, but public schools are open to all students.

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Mr Allen: You have referred to the number of students who are accessing your school from the separate base. Are they there just sort of by general preference or are they there accessing specific programs that only you have and the separate board does not have?

Mr Michon: In the French language, they are there by choice. As we did mention, they do purchase services in the technical area. In order to even keep the increase at a minimum, we also purchase services in the French language from the separate school board in the academic, the mathématiques, l'histoire, la géographie, il y a un message.

We exchange in the boards, and we do work well together. As we did say, we try to keep our community together, but I am afraid this is going to be the last. This is really going to break it unless something happens. This is why we are begging for you to get that guarantee in legislation, to give us something to work with.

Mr Peterson: I think we perceive the public mandate as being far more heterogeneous. That is part of the problem. The Catholic mandate is far more homogeneous and, as a result, we operate, again, with small classes, with that type of thing. That is what we are perceiving, the equity-equality idea. Equal dollars do not mean anything; equity does. Equal dollars buy different things, but if you are really going to have equity, you have to have more money in a system that is going to offer more, and I think that is the key.

The Vice-Chair: Mr Johnston, did you have a question?

Mr R. F. Johnston: No, Mr Allen touched on the areas I was going to touch on. I think we get the message very clearly. Some of us do.

Mr Allen: I know that the ministry representatives have been asked this question before, but it is a different audience and perhaps they could come and speak to it in this setting again.

The minister has indicated that he is prepared to make certain that the guarantees are lived up to and so on, but perhaps somebody from the ministry could come forward and explain for us and for this audience why, from their point of view, those guarantees were not written into the legislation in quite explicit terms. Are there some reasons that we need to know about, that these gentlemen need to know about?

Mr Lenglet: I will make it very brief.

Mr Allen: He said before it was not his mandate to do something.

Mr Lenglet: No, I think what I said last week was, first off, that at no time during the consideration of putting this package together had it occurred to us to put such a guarantee in the legislation. We certainly had no instruction from the group that had discussed this matter to include that particular guarantee in the legislation we were drawing up.

As to any personal impressions, I do not think those are overly relevant. I think in proceeding through the whole development of this, we have directed ourselves to determining a fair packaging basis for a fairer sharing of those revenues that were to be shared and were aware that the minister had given his guarantee that the public system as a whole, through the increase to the grant ceilings and the operating grants, would not suffer a loss, and that no public board at all would suffer a loss of revenue.

Mr R. F. Johnston: That was a political decision. Mr Keyes, come on, talk to the minister.

The Vice-Chair: Thank you very much, gentlemen. I will let you two carry this on outside, if you wish.

Now, the Metropolitan Toronto School Board, please, if you would come forward. Thank you very much for appearing before us today. I would ask that you introduce yourselves for Hansard.

METROPOLITAN TORONTO SCHOOL BOARD

Mrs Waese: We would like to thank you for the opportunity to present to you the views of the

Metropolitan Toronto School Board on the provisions in the Education Statute Law Amendment Act pertaining to the pooling of commercial and industrial assessment.

I am Mae Waese, chair of the Metropolitan Toronto School Board. Present with me this afternoon are members of the committee of board chairmen of the Metropolitan Toronto School Board. I would like to introduce on my far left Ken Maxted, chairman, East York Board of Education. Seated next to him is our director of the Metropolitan Toronto School Board, Charles Brown. Seated to my immediate left is Anne Ladouceur—I was going to say chair, if you will allow me—chair of the Toronto French-language School Council. To my immediate right is Tony Silipo, chair of the Toronto Board of Education.

I would also like to indicate that the chairmen of the Etobicoke, North York, Scarborough and York boards of education are unable to be present with us this afternoon. In particular, Dianne Williams phoned in just a short time ago. She is ill today and is very regretful about not being here.

We are sharing the presentation this afternoon. I would like to call on Anne Ladouceur to begin.

Ms Ladouceur: We represent the eight public school boards in Metropolitan Toronto that comprise the Metro federation under the umbrella of the Metropolitan Toronto School Board. This federation forms the two-tier system of educational governance that is unique to Metropolitan Toronto.

The public school boards in Metropolitan Toronto provide educational programs for 257,000 students, who represent 20 per cent or one in every five of the public school pupils in the province of Ontario. We employ some 15,000 teachers and over 10,000 support personnel. Our budget in 1989 is \$1,678,000,000, a most significant material contribution, supporting the education of public school pupils in Metropolitan Toronto.

Ce soutien financier permet aux huit conseils scolaires du secteur public de la communauté urbaine de Toronto d'offrir un programme scolaire qui répond aux besoins de chaque étudiante et étudiant. Dans une métropole de l'envergure de Toronto, dont la population s'élève à 2 500 000 élèves, les exigences qualitatives quant aux normes d'enseignement sont élevées. La diversité des programmes demandés englobe un éventail complet et la priorité absolue est de répondre aux attentes individuelles de chaque étudiante et chaque étudiant.

La Fédération des huit conseils des écoles publiques de la Communauté urbaine de Toronto a pour fondement le principe de l'égalité des chances en éducation chez toutes et tous les élèves de notre système.

Lorsque le Conseil scolaire de la Communauté urbaine de Toronto fut créé en 1954, il a été déclaré que les ressources pédagogiques de toute la communauté seraient partagées de façon à assurer des chances égales en éducation pour chacune et chacun de nos enfants, sans distinction de la communauté dans laquelle ils ou elles vivent à Toronto.

Depuis le 1^{er} janvier 1989, ce principe des chances égales en éducation a également été assuré de façon concrète aux étudiantes et aux étudiants francophones des écoles publiques.

Les contribuables du secteur public de la communauté urbaine de Toronto versent plus 1,6 milliards de dollars, pour que cette intention louable devienne possible. Les contribuables du secteur public de la communauté urbaine de Toronto s'efforcent de faire de l'égalité des chances en éducation une réalité, et nous croyons que les clauses régissant le projet de loi 64 mineront sérieusement notre capacité à atteindre ces objectifs.

In its response to the report of the Macdonald commission and on other occasions, the Metropolitan Toronto School Board has expressed its opposition to the concept of the pooling of industrial and commercial assessment.

1700

Mrs Waese: However, various sections of Bill 64 provide for the introduction in 1990 of a system of coterminous sharing of local education revenues derived from business partnerships, private corporations, publicly traded corporations and telephone and telegraph companies, to be phased in over a six-year period.

According to the Treasurer (Mr R. F. Nixon) in his 1989 budget speech, an amount of \$165 million is to be added to base operating grants to ensure, supposedly, that the public school system on a province-wide basis will not suffer. The government has admitted that some boards may experience a loss in revenue, but it is proposed that these boards will be compensated. However, no provisions for such compensation appear in the bill. I heard your comments just a little earlier which pointed to this.

In fact, an impact study prepared by officials of the Ministry of Education indicates that 13 public school boards will suffer a loss of approximately \$39 million over the six-year phase-in period. Of this amount, \$24.5 million

will be lost by the Metropolitan Toronto public school system.

For reasons set out in our following comments, we must express very grave doubts as to the adequacy of the compensation proposed by the Treasurer. There is an apparent discrepancy of \$24 million between the amount of \$108 million provided for in the 1989 budget and the estimated requirement of \$204 million. That is \$165 million for increased ceilings and \$39 million to cover losses.

Estimates of the effect of pooling have been made on the basis of the 1987 assessment roll for 1988 taxes. Even if compensation is based on 1989 school board budgets, it will not take into account the inevitable increases in board spending in 1990 or the considerable impact of inflation during the six-year phase-in. We have been informed that any growth in our assessment base during the phase-in period will diminish the level of compensation.

Mr Silipo: In the event that the provisions of the bill relating to pooling stand, we ask for an amendment that would guarantee in the bill itself full compensation for any loss of revenue incurred by any public school board in Ontario as promised by the Treasurer at the time of his budget presentation.

There is a further amendment that we suggest is vital to the credibility of the government that tielle pour atteindre une équité dans le finance-
legality of Bill 64 itself. It is our interpretation of subsection 29(4) of the bill, amending subsection 126(5) of the Education Act, that the division of the assessment of a privately held company or limited partnership between the public and the separate school system may be determined by the portion of the total shares of the company that are held by shareholders of the Roman Catholic faith. For example, if the owners of 25 per cent of the shares are Roman Catholic, 25 per cent of the assessment of the company may flow to the separate school board.

However, this provision as it stands ignores a basic principle of educational governance in Ontario, which is that all Roman Catholics are not separate school supporters. In Ontario, Roman Catholics have the option of directing their educational taxes either to the separate school system or to the public school system.

Many Roman Catholics do support the public school system, yet the bill permits the portion of assessment of a privately held company attributed to Roman Catholic shareholders to be directed to the separate school board. Only that portion of the assessment that is attributed to separate

school supporters, as opposed to Roman Catholics, we believe should be permitted to be directed to the separate school board.

We therefore suggest that unless this provision is amended appropriately, the bill will be flawed and the government will leave itself open to legal and constitutional challenges.

Mr Maxted: No allowance has been made for compensation, apparently because of lack of adequate data, for losses arising from the rule changes affecting assessments of business partnerships, nor will the compensation provision deal with the problem that the very large sums needed to be raised annually for extraordinary expenditures, transportation, new schools, renovations, replacements and furniture and equipment, will be raised from a reduced tax base. No provisions have been made that compensation will continue after the sixth year.

Pooling provides separate school boards with the opportunity to lower mill rates to attract additional residential and farm assessment, which in turn would generate a higher proportion of commercial and industrial assessment, a vicious circle operating to erode the public school funding base.

We wish to express a further concern, that the present amendments represent the first step towards an eventual pooling of commercial and industrial assessment on a province-wide basis. We feel it is our duty to inform the committee that any such extension would have the gravest consequences for Metropolitan Toronto in terms of wholly unacceptable increases in local mill rates, a significant decline in the standards of equal opportunity education and an erosion of the quality of education that we currently provide to our students.

Mrs Waese: In summary, we wish to reiterate our continued opposition to any form of pooling of assessment. The educational viability of the public school system in Metropolitan Toronto is based upon its historical base of the residential, industrial and commercial assessment of public school ratepayers.

We view Bill 64 as a deliberate manoeuvre by the provincial government to diminish the economic base of the public school boards in Metropolitan Toronto. By this legislation, the government of Ontario will impose restrictions upon the levels of service and the quality of programs that we are able to provide to our communities. By this legislation, the government of Ontario is eroding our capability as public school trustees to meet the needs of the

children and adults we serve in Metropolitan Toronto.

The Vice-Chair: Thank you very much. Those are fairly strong words and we will certainly take them into consideration. The first questioner is Mr Johnston.

Mr R. F. Johnston: I thought they were pulling their punches again this time. I do not know. After so many presentations before our committee, I guess it just seems like talking to brick walls.

I wanted to ask a question, if I might, on your behalf of the parliamentary assistant and that is that we have heard a lot about the notion of putting the guarantee into the law, but what about this section that has been raised a couple of times now about the wording about Roman Catholic rather than separate school ratepayer? You have had some time to reflect on this now because we have had other groups raise this concern, and I wondered if we could have a response from you about what the government thinks about this recurring theme.

Mr Keyes: It might still be somewhat premature to make any comment in that regard until we get into the actual clause-by-clause study of this and looking at—

Mr R. F. Johnston: That is tomorrow, is it not?

Mr Keyes: No, it is not, but until such time as we have heard the final ones.

I think that has been raised on a couple of occasions as to whether it should be the number of Roman Catholics or whether it should be on the amount of the assessment. I am not prepared at this time to make any comment on it. I do not know that any member of staff is at the moment, because as I say, that is something that has to be considered in the amendments, which have not been tabled yet by the government.

Mr R. F. Johnston: I certainly would not want to put staff on the line—

Mr Keyes: No.

Mr R. F. Johnston: —because I do not think it is their decision. I think it is very much a political decision. You have a few hours left. I guess we will give you some leeway until tomorrow when we do clause-by-clause.

Mr Keyes: Wednesday.

Mr R. F. Johnston: Wednesday? Well, this is news to me.

Mr Keyes: I was given that information today. Someone else had said the same thing, that they

were not aware it was Wednesday morning as opposed to tomorrow afternoon.

Mr Jackson: That is the first I have heard of this.

Mr Keyes: Is that right?

Mr R. F. Johnston: There was some talk about that at some point. I think you will find that it is probably on tomorrow afternoon and you are just going to have to get your thinking hats on that much quicker, I guess.

Mr Keyes: It might just happen to me again. I will work this evening?

Mr R. F. Johnston: I thought we might get an answer for you.

The Vice-Chair: Mrs O'Neill is, I guess, stuck at the Ottawa airport with freezing rain, so possibly she has the last word.

Mr R. F. Johnston: Some would say that is still a better option than being here.

Mr Jackson: I am anxious to get a response, if I can. I have raised the issue of what legal advice the government has been given with respect to some of the points that have been raised, and yet again we have a question raised on page 6 of this brief. I wonder who is responsible for legal advice to the minister in these matter. Are they present and can they react to the question of whether the legislation will sustain itself as it is currently written.

Mr Keyes: I will ask legal counsel to make a comment.

Mr Jackson: He could sit with Mr Henderson and have access to a microphone.

1710

Mr Riley: I think the point to be made about this issue is that what we are doing in this legislation represents no change from the status quo. The use or the reference to the number of Roman Catholics as the upper limit on the extent to which a corporation or partnership may designate its assessment to the separate schools is a feature of our legislations going back into the last century. We are not doing anything new here at all.

As far as the constitutionality goes, there are two points to be made. The basic one, I guess, is that the rights of the minority to support the public school system are not a constitutionally protected value, speaking here outside of the charter for the moment. Speaking in terms of the Constitution Act, 1867, this is not a constitutionally protected right.

Second, even if it were, what we are dealing with here in this legislation are the rights of the

separate school system to acquire a further portion of commercial-industrial assessment. There are other opinions on this, I will admit, but my research indicates that this is entirely a right acquired after Confederation and is therefore not protected by section 93 of the Constitution Act.

Finally, as far as the charter goes, we did seek from the constitutional law division of the Ministry of the Attorney General an opinion on the constitutionality of this and other aspects of the legislation. Their conclusion was that there was not a charter concern in this particular connection. This was specifically addressed in our request to them.

We have certainly been aware of this concern and have gone to some pains to try to get what comfort there is. There is no certainty in these matters, but we have certainly not ignored this point.

Mr Jackson: Could I ask if the dissenting opinion was internal or external.

Mr Riley: Actually, it is less an opinion than a matter of research. I was not primarily responsible for doing this research. My research went so far and indicated, as I said, that we had no worry here. All I am doing is allowing for the possibility that further in-depth research into what this involves, a lot of historical research—it is possible a different view might emerge and receive some support but we have not detected any sign that such a position is valid. We believe we are on solid ground here.

Mrs Waese: What I would like to do that might be helpful for the committee and the legal opinion is if our staff could be explicit as to what we find inappropriate.

Mr Brown: I am interested in the comments of staff. The Metropolitan Toronto School Board has a considerable amount of experience in rights attained after Confederation and the challenges we took to the Supreme Court of Canada. As a staff person, I would be most interested in the wording of the bill if and when it is amended; if not amended, we would still be interested in it from a legal point of view and a constitutional point of view.

What we are concerned about and one of the basic issues in this, of course, is the very clear-cut distinction in our mind between citizens of Roman Catholic faith and separate school supporters. There is a very clear-cut distinction in the educational law in that regard and we believe that the division of assessment, if it does occur, the division of the flow of money to the separate school board should occur on the basis of separate school supporters and not on the basis

of the number of people in a company who hold shares in a company on the basis of their faith. That is the basic argument that is made in this paragraph in our brief.

Mr Jackson: Then a follow-up question would have more to do with the notion of how administratively difficult it would be to perform an amendment to this legislation to achieve that. Was there any regard with respect to how, administratively, one would be more difficult than the other for purposes of administration?

Mr Riley: It was not a primary consideration because essentially it was not part of the mandate we received to deal with this issue and make any changes to the pre-existing state of the law on this.

As to the extent of operational difficulty or any concern of that sort, I am probably not the best to comment. I really do not know. I suspect that it would cause, at this stage, the Ministry of Revenue no small degree of grief to make this major change. If you were considering this, it would be a major one that would—

Mr Jackson: I will leave the point, but I am trying to get a sense of whether the ministry has a handle on which methodology would be easier to administer. I am sensing that was never really of major significance, but now the concept of amending represents itself as a major impediment. That distresses me even more.

I am just simply suggesting that to indicate, whether it is through you or through a government member, that the chance of amending it is impeded by virtue of the fact that it might create some difficulties in change draws into question the whole process of public hearings and their time with respect to the implementation of this legislation.

This is a very tight agenda in terms of completion. Although I will not hold you accountable for the attitude of the government in terms of its ability to amend, that is not your area of responsibility, I just think it is worthy of note that I would hope we have not done this exercise for its public relations benefit but have done it more for a serious effort to get all the facts on the table and the will to make the best amendments to make sure that public education is protected and yet the constitutional rights of separate school supporters have some more meaningful access to funding in this province.

I will leave it at that and I think Mr Allen has a question.

The Chair: May I apologize. I am very sorry. I intended to be here about an hour and a half ago, but for those of you who may hear it on the news,

the limousine drivers at the airport decided to go on strike this afternoon and made everybody else stay in the airport, as well as themselves. So I have had a rather frustrating last couple of hours. I am glad that things have carried on as they always do. We all know we are very dispensable when the moment appears.

Mr Allen: You have had a change of pace in frustrations, although not necessarily a qualitative change in life.

I welcome the Metro board's presentation. I think we have just one further question that we would like to ask you. You refer on page 4 to the impacts of inflation, growth of assessment base, on your circumstances down the road. I wonder if you have for us any hint or even more exact projections of what you anticipate to be the rate of growth in assessment in the region and what you assess to be the overall impact in the diminution of your level of compensation. Are there some global figures you can give to us?

Mrs Waese: Could I start by sort of telling you the areas we are thinking about, and perhaps the director or the staff members who are present with us might give you specifics.

Right off the top of my head, as I was driving down here I may have anticipated your question, but I was thinking to myself, if you would like some examples that we can anticipate in terms of inflationary areas, for certain we know that we have to deal with the payroll health tax, which is approximately one per cent of our budget, which you heard is \$1.6 billion. That is one thing.

The other one, of course, is our pay equity, and that again is approximately that percentage of our budget, approximately one per cent.

We are also looking at \$155 million which you have given to us, but that could escalate, because these costs are just what there is today. They are anticipated today, but they are not necessarily what will be our costs.

We feel that you have given a number that does not include what our major concern is: Will they be eroded by the kinds of things I have just given you examples of? It is based on the 1989 budget, and if you overlap that with inflation—that has been our experience with our grant. That is why Metro does not enjoy any grants now, because the assessment base grows, which again is another factor. If our assessment base grows, does that mean we will not even get any of the \$24.5 million indicated?

Our feeling of frustration is that in fact we will see very little of that flow-through of funds, and that has been our experience in the past, although we have been promised that we will not be

impacted. We have been promised, from the day Mr Davis made the announcement, in good faith and with the appropriate attitude of reaching out to our colleagues on other boards who do not have the funding, that we should not fear, that public education will not suffer. But that has not been the reality. If you would like specifics, perhaps I could just ask our staff.

1720

The Chair: Could you be as brief as possible, because you know we have this vote hanging over us and two other presenters.

Mr Brown: Very brief. The ministerial projections are that there will be a reduction in our assessment base of 1.4 per cent per year. Our projections indicate a growth for us in Metropolitan Toronto in our assessment base of 1.5 per cent. So it looks like, in the parlance of the gaming table, a push situation, where they will balance each other out. We have admired the ministry over the past few years and its ability to handle our grant situation and keep us eternally at zero throughout the past couple of years, and we expect we will continue to get zero grants during this period of time.

It is of concern to us that the impact of inflation, which is running at six per cent, October to October this year, and which we are projecting into our budget for 1990, has not been taken into account. When you project that through the next six-year period, that is a very dramatic impact on our budget.

The Chair: Thank you very much. I will be reading your brief. Unfortunately, I was not here for your presentation.

May I have the Ontario Public Education Network, please, Mr Gunn and Mr McEwen.

Are the representatives of the Sault Ste Marie Board of Education present at the present time? I just want to forewarn you that because that previous presentation has run over slightly, we are now in the mode where we are going to be 20 minutes, beginning now, to a quarter to six, when the vote is so scheduled, so we may have to ask you to bear with us. Let's do that and then come back and hear your brief at six or whatever. I am just trying to lay out the ground rules. If we all disappear very quickly, I think we have all agreed to meet a little later tonight and we will come back to hear your brief. I think that would be what the committee would like.

All right, if I may have the presentation.

ONTARIO PUBLIC EDUCATION NETWORK

Mr Gunn: My name is Joe Gunn and I am from Cornwall. I have been asked to make this

presentation on behalf of the Ontario Public Education Network.

I would like to introduce the other representatives of OPEN who are here with me today. On my extreme left is Bill Martin. He is president of the Ontario Public School Teachers' Federation. To Bill's right is Jim Head, president of the Ontario Secondary School Teachers' Federation. To my immediate left is John McEwen. He is the principal author of the OPEN study of pooling impact, which I believe has now been circulated. To my right, of course, is Helen Penfold, the president of the Federation of Women Teachers' Associations of Ontario. With us next to Helen is our legal counsel, Wallace Kenny.

The Chair: Other than the last person, I think these people are all very familiar to us and no doubt are just introduced for the purposes of Hansard.

Mr Gunn: In addition to speaking for OPEN today, I am also treasurer of the Ontario Public School Boards' Association and chairman of the Stormont, Dundas and Glengarry County Board of Education, which is one of the 48 public school boards that will require special grants in order not to be net losers.

We appreciate the opportunity to be heard by the standing committee on social development as it considers government Bill 64 and Bill 65, which will impose a takeaway from public school boards of a significant part of their traditional local tax base.

These bills are being considered by this committee with undue haste. This committee has set aside a total of seven and a half hours over three days to hear representations from concerned individuals and organizations. These hearings are taking place without any effort on the part of the committee to give notice to the public. It is our understanding that it is the intent of the committee, or at least the Liberal majority of members, to begin and complete clause-by-clause review of these bills in two and a half hours or less tomorrow. With all due respect, this process by this committee provides less than adequate consideration of the issues involved.

The purpose of OPEN's presentation is to document the financial hardships facing public school boards and public school ratepayers as a result of provincial government policies, including the impacts of Bill 64 and Bill 65.

It appears increasingly certain that the worst fears of the public school community about the full impact of extension of public funding to Roman Catholic separate school boards at the secondary level are being realized. In the opinion

of OPEN, the extension of funding to separate secondary schools is increasingly being paid for by public schools and public school ratepayers.

This submission deals with the following matters: the need for amendments to guarantee the promises of compensation to public boards for lost assessment; rule changes concerning separate school boundaries and zones; response to the amendments proposed by the Completion Office Separate Schools; the downloading of provincial costs on to local property taxpayers, and the results of the OPEN impact study on pooling.

The need for guaranteed compensation in the legislation: If passed, Bill 64 and Bill 65 will, according to our study of pooling impacts, transfer approximately \$279 million of commercial and industrial tax revenue from local public school boards to separate school boards over the next six years. The Ontario government has given verbal assurances that public boards will be reimbursed for their losses with provincial grant money.

When announcing the policy in the Legislature on 18 May, former Minister of Education, Chris Ward, said: "Public boards of education have always had a mandate to provide the best quality education for all children in this province. They have done this effectively over many generations and I believe the changes we put forward today will ensure they continue to do so with adequate local resources, since in no case will a public board experience a net loss in revenue." I want to highlight that last sentence: "since in no case will a public board experience a net loss in revenue."

That promise was repeated again by our new Minister of Education (Mr Conway) on 7 November. He said: "The government has said that no board will suffer a net loss of revenue as a result of this policy. I am going to stand behind that commitment. I understand the concern of the public boards out there and that is a legitimate concern."

When the Ontario Legislature passed Bill 30, the 1985 legislation that extended full provincial funding to Roman Catholic separate school boards, the guarantee of the continued viability of the public school system was placed in the bill. This was done to assure the people of Ontario that the policy to extend funding would not be done at the expense of the public school system. Now, by another action of this Legislature, a significant amount of local public school revenue will be diverted to separate school boards. Once again, public school students and taxpayers require a

legislative guarantee that their school system will be fully compensated.

We included as appendix A a series of specific amendments to Bill 64 and Bill 65 which, if adopted, will provide full and permanent compensation to public school boards for assessment transferred to separate school boards under this legislation and its contemplated regulations.

1730

Rule changes concerning separate school board boundaries and zones: Through the provision of Bill 64, the government will provide better access to property taxes for Roman Catholic separate school boards by enhancing the ability of families of Roman Catholics to create separate school zones for tax purposes. This is part of a series of changes contemplated to school board boundaries, which will likely have the greatest impact in northern Ontario. It is OPEN's belief that for some public boards, the impact may encompass major property taxpayers like mines and paper mills which were not within the previous separate school board boundaries. OPEN expects amendments to Bill 64 to provide full and permanent compensation for any public school board losses. The amendments proposed in appendix A would take into account these contemplated changes.

We would like to respond to the submission of the Completion Office Separate Schools. OPEN has reviewed with interest the submission to the Completion Office Separate Schools before this committee. OPEN would like to respond to certain of the points raised by COSS in its brief. These responses will be grouped according to the headings used in the COSS brief.

Public corporations as partners: COSS is concerned with the situation where a corporation is a member of a partnership. While it suggests that its proposed amendment would ensure that a public corporation's share of the assessment of a partnership would be pooled, it is clear that its proposed amendment does much more. This amendment would not lead to pooling, but rather would require the corporate partner's assessment to be entered, rated and assessed for separate school purposes. This is the furthest thing from pooling or sharing. It is the enforced designation of the separate school sector of a public corporation's assessment within the context of a partnership. No one should be forced to support the separate school system, as would be the case pursuant to this proposed amendment.

The definition of "public corporation": OPEN offers the following comments on the five different changes proposed by COSS, which go

far beyond the government's stated purposes of pooling.

The requirement for direct ownership: Unless the provisions of Bill 64 are to become mired in a sea of uncertainty and litigation, it is essential that the definitions and provisions enacted are capable of self-regulation, in the first instance, and accurate and expeditious dispute resolution, if required. With all due respect, the suggestion of COSS that the phrase "directly or indirectly" has a clear meaning in corporate and securities law is the furthest thing from the truth. The concept of indirect ownership and control has generated and continues to generate litigation in the corporate and securities law sphere. How are corporations and partnerships to know whether the nexus between a particular share and a particular Roman Catholic is sufficient to constitute indirect ownership? How are such determinations to be made by assessment officers?

The purpose of Bill 64 is to introduce the concepts of boundary revision and pooling. It is not to effect a wholesale revision of the method by which the tax assessment of corporations is determined. The proposed amendment goes far beyond the intended scope of Bill 64 and it should be rejected.

Municipal corporations and other government bodies: Once again, the proposal of COSS in this regard looks upon Bill 64 not as a mechanism for the pooling of the assessments of public corporations, but rather as an opportunity to effect further restructuring of the existing school tax assessment system in Ontario. The government's initiative in this regard, as described repeatedly by ministers of education Ward and Conway, is directed towards publicly traded corporations. It should be so confined.

Who has the right to designate: The COSS recommendation as drafted takes the concept of the tyranny of the minority to an absurd extreme. As drafted, this amendment would permit even one shareholder or partner who is a Roman Catholic to determine the designation in respect of all other Roman Catholic shareholders or partners.

The proposed amendment would permit any single shareholder to require the corporation or partnership to designate the assessment to the maximum proportion referred to in subsection 5 even if other Roman Catholics do not wish to support the separate system. This type of forced association is of questionable constitutionality, and in any event is clearly inconsistent with the intent of the bill and it too should be rejected.

The omission of certain business vehicles: The Completion Office-Separate Schools is attempting to expand the purpose of Bill 64 beyond the pooling of the assessment of public corporations. The issue of trusts in terms of their definition, their proper treatment and the possible impact of pooling trust assessments has never been considered by the Legislature. With all due respect, such changes are not within the mandate of this committee.

Like the Ontario Public School Boards' Association, the Ontario Public Education Network is very concerned by the fact that no impact studies have been done with respect to the likely effects of pooling once separate school boundaries are revised. To now suggest that this committee and the Legislature should consider a further amendment which would involve the reallocation of trust assessments in the total allocation of any impact study of any kind is unwise to say the very least.

Pooling is occurring amidst an ever-escalating trend of downloading of the costs of education from the province to local boards and property taxpayers. The rate of provincial support to public elementary education has dropped to 33.5 per cent in 1989. The rate of provincial support to public secondary education has dropped to 27 per cent in 1989. There is a mistake printed there. It is 27 per cent, not 17 per cent, but that still is the lowest since 1944. The rate of provincial support to local education has dropped to 42.3 per cent in 1989.

Local school taxpayers contributed an additional \$1 billion in 1989. The average rate of government support to school capital projects capital is dropping from 75 per cent to 60 per cent, at an additional cost to local taxpayers of \$100 million. The new employer health tax to replace OHIP premiums will cost boards an estimated additional \$80 million in 1990.

Is it any wonder then that public school boards are concerned about the loss of a significant portion of their property tax base?

OPEN is on record as being opposed to the pooling of commercial and industrial assessment between coterminous public and separate school boards. This opposition is based on the fact that pooling will undermine the fiscal security and autonomy of the public school boards in enabling them to implement their mandate in providing universally accessible educational opportunities for all learners regardless of religion or educational needs.

Our opposition is also based on the experience that public school boards had with the transfer of

residential and farm assessment at the secondary level in 1987. Public boards lost \$120 million in revenue from this assessment. Their grants rose by only \$66 million.

The Chair: I do not have any requests for questions at the moment, but you are getting to two thirds of the way through your time. I am wondering if you want to sum up some of this or go directly to your recommendations. I am sure someone will want to ask a question and we only have about five to seven minutes left.

Mr Gunn: May I just for a moment talk about the major findings of OPEN's study of pooling impacts. Public school boards across Ontario are projected to lose property tax assessment worth about \$5,249,000,000 in the next six years as the result of pooling. In the first year of pooling, public school boards will lose assessment worth about \$750 million. School purpose mill rates will continue to climb sharply and the provincial share of local school costs will continue to fall over the next six years.

Across Ontario, 48 public school boards will suffer financial losses as a result of pooling, contrary to a Ministry of Education forecast of only 13. Over the six-year phase-in period, the total cost to the province of paying extra grants to compensate public school boards fully for assessment transferred to Roman Catholic separate school boards is projected to be \$414 million.

Once pooling is completed, the Treasurer's original commitment of specific grants of up to \$15 million to ensure that no public school board would be a net loser is too low. OPEN's estimate is that the cost of full compensation, once pooling is completed, will be \$116 million a year. Provincial policies on school finance have done very real harm to public school boards.

I have three recommendations. I would like to read them.

The Ontario Public Education Network recommends that no pooling proposal be implemented at least until an accurate assessment of the financial impact can be carried out in conjunction with public school boards.

Second, the Ontario Public Education Network recommends that once the impact assessment has been completed and analysed, the government must commit itself to guaranteeing that grants equal to the revenues lost to public school boards through pooling be allocated on an ongoing basis in addition to any other grants.

Third, OPEN recommends that to accomplish the intent of recommendation 2, a series of amendments to Bill 64 be made to provide full

and permanent compensation for any public school board losses.

1740

The Chair: Are there any members of the committee who have questions of the presenters? Mrs Marland? I presume one of the two of you is going to ask a question. Have you made up your minds which one?

Mr Jackson: I am flabbergasted the government has no questions. I continue to be flabbergasted by that point, Madam Chair, and you are aware of that.

The Chair: Have you got a question besides your—

Mr Jackson: I have a whole raft of them.

The Chair: Okay. Would you please begin. We have five minutes.

Mr Jackson: I have not got through all of your brief. Do you have any specific recommendations on the wording of a clause that would put in legislative language the guarantee the government speaks to?

Mr Kenny: Yes, there is language actually provided in appendix A to the brief that would provide that kind of guarantee.

Mr Jackson: Could you read that into the record and bring it more directly to our attention.

Mr Kenny: It is in appendix A of the brief. I believe recommendation 1 and 2 speak specifically to that guarantee of funding. Would you like me to read it all into the record?

The Chair: You may do what you wish to have whatever you think is important placed on the record.

Mr Jackson: The reason I say that is that there are differing opinions how that guarantee might be handled in a legislative fashion.

Mr Kenny: What we are proposing is this—

The Chair: I am sorry, sir, you are not being heard because you are not close enough to the microphone.

Mr Kenny: What we are proposing is recommendation 1: That section 126a of the Education Act be amended by the addition of a new subsection 11 which shall read as follows:

“(11) The assessment commissioner shall determine the amount of the assessment which without the enactment of this legislation and the regulations made under it would have been entered into the assessment roll for the public board in each municipality for which the public board has jurisdiction, and which due to the enactment of this legislation is transferred and

entered into the assessment roll for the separate board or boards which have jurisdiction for those municipalities. The assessment commissioner shall inform the secretary treasurer of the public board, in writing, of the amount of assessment which has been so transferred by the enactment of this legislation and the regulations made under it.”

Recommendation 2: That subsection 43(3) of Bill 64 be amended by the addition of a new subsection to section 161 of the Municipal Act which shall read as follows:

“(22c) The clerk of each municipality within the jurisdiction of a public board shall determine the amount of taxes which under subsection (22a) would be allocated to the separate board or boards having jurisdiction in the same municipality. The clerk shall inform the secretary treasurer of the public board, in writing, of the amount of tax which has been so transferred under subsection (22a).

Recommendation 3: That subsection 44(1) of Bill 64 be amended by the addition of a new subsection to section 81 of the Regional Municipality of Haldimand-Norfolk Act, and that deals specifically with that particular situation.

The Chair: We are getting to the end of time. I do not know whether you want to continue on in that vein or not. Mr Allen has a question that I would like to grant.

Mr Allen: I appreciate the detail and force of OPEN's presentation. There are obviously a number of points here that we could follow up but I wonder, since we have very little time, could you please indicate to us, perhaps in writing, which in your estimation are the 48 boards that you find suffering loss under the calculations. Could you also, perhaps not as briefly, indicate the methodology you used to reach that conclusion.

Mr Gunn: It is on page 9 of the impact study. Did you get a copy of the impact study along with the brief?

The Chair: Yes, we did get the impact study as well.

Mr Allen: Oh, I see. I have not had a chance to look through that.

Mr Gunn: However, we would be pleased to respond to any questions you might have. We will respond in writing.

Mr Allen: Good. Thanks.

The Chair: Have you anything further, Mr Allen?

Mr Allen: Not having had a chance to look at the tables, I guess I am curious whether those calculations of losses include such elements as were not part of the ministry's calculations; for example, inflation, assessment increase, value of assessment bases in the course of the six years. What were the principle factors—just tell me orally—that played into that calculation to give you the 48 figure.

Mr McEwen: All of those, sir. In addition, the present pattern of the government's funding of education, the school grant plan, was extrapolated forward; that is, the changes in the provincial equalized mill rate and the changes in the basic per pupil block grant and so forth, so all of that was included in the mix.

The most significant cause of the difference between our study and theirs was that the historic downloading of costs occurred in 1989; their impact study was from 1988. It is the downloading of costs that place the additional burden upon the local taxpayer due to pooling.

The Chair: Thank you very much, Mr McEwen. There are other questions and some of them you are going to answer in writing. To be fair to the other presenters, I have to close this presentation.

Mr Gunn: Thank you very much, Madam Chair, for the opportunity to appear before you.

The Chair: Thank you very much and especially for bringing the impact study along. May I have the Sault Ste Marie Board of Education, please; Mr Findlay.

Is there a vote going to be called?

Mr Keyes: The vote is called at a quarter to six.

The Chair: I have been told by the clerk that it is not definite.

Mr Keyes: It is a special surprise vote of which we have been made aware this afternoon, so we will have to go if the bell rings. It will be a five-minute bell.

The Chair: Okay. I presume we are going to have to ask you to bear with us as we go upstairs to vote. We are just checking that at this moment.

Mr Keyes: We can keep going till the bell goes.

The Chair: Apparently, we will have to be at the mercy of the bells. We will ask you to begin. I know these are very unfavourable working conditions. I am sorry, but these are the kinds of constraints we are under this afternoon. Mr Findlay, you are the superintendent of business

and you are going to make the presentation. Have you given a handout to us?

Mr Findlay: Yes.

The Chair: Okay. I have a handout here. Please begin.

SAULT STE MARIE BOARD OF EDUCATION

Mr Findlay: On behalf of the Sault Ste Marie Board, I wish to convey our thanks for the opportunity to appear before the committee on Bill 64. I will be speaking about Bill 64, not Bill 65. I will take you through the brief. I will not be reading it all, but I would like to refer to an attachment in here that will draw out the Sault Ste Marie public board and the Sault Ste Marie separate board on some figures.

Back in May, as you are aware, each board received from the ministry the costings on pooling which was based, as you have heard, on 1988 data. We really would have appreciated the new 1989 data but we do not have that.

Of course there is the oft-quoted phrase "since in no case will a public board experience a net loss of revenue" and you have heard that many times.

The information released by the ministry on pooling indicates of course that there are 13 boards that are suffering a net loss of revenue. The Sault Ste Marie board is one of those boards. That is where we are losing funds beyond the \$165 million in grants over the six-year phase-in period.

1750

In attachment 1, if I could refer you to that, and turn to page 3, perhaps I can put it in a nutshell. You may have had these figures available to you, but I picked them out of the ministry distribution of its costings of the impact of pooling and set them out for the Sault board and the Sault separate.

If you look at the third column, which is headed "Net Revenue Impact Before Assistance," you will find there that the Sault board will have a loss in revenue of \$1,887,000, and just below that you will find that the separate school board will have an increase in revenue of \$1,207,000. Then with the additional grant, which is part of the \$165 million, the Sault board will pick up \$1.3 million, and in addition the separate school board will pick up nearly \$600,000 even though it is in a positive position under the third column. That is somewhat similar or equal to the amount that the Sault board is short in revenue: \$554,000.

The impact on the average householder is a \$13 increase for public schools but an \$85 decrease for the separate schools. It would seem to me that these figures should really come out to zero rather than being increases if the grants are sufficient.

I refer you back to the bottom of page 1. The purpose of financing pooling is to balance out the effects of pooling in order that no public board will experience a loss of revenue. If the ministry pays a grant of \$554,000 to the Sault board to cover to cover its loss of revenue, why would the separate school board receive an additional grant of nearly \$600,000 when its net revenue impact before assistance is in a positive amount of \$1.2 million?

To provide fairer treatment to the two Sault boards, the ministry should provide grants to cover only the negative grant, in my mind, the amount shown as "Net Revenue Impact Before Assistance," and that would be in our case \$1,887,000. In the case of the separate schools, their revenue impact is at \$1,207,000 which is a positive position in any case.

In 1989, the separate school mill rate is a fraction—I mean a decimal place—below that of the Sault Ste Marie Board of Education and this has been the general case for many years. Therefore, in table 1, as I indicated to you, while the average ratepayer in the Sault board will pay \$13 more in taxes, the separate school ratepayer will pay \$85 less, according to the ministry's figures.

Lowering taxes by such amounts for one board will create considerable tax support problems for adjacent boards, in my mind. Very seriously, boards are in competition with each other and one way to compete is through lower taxes, so that would create a problem.

On page 6, coterminous pooling: The sharing of commercial and industrial assessment between coterminous boards will mean that school boards annually experiencing considerable commercial-industrial assessment growth will continue to outstrip those boards with little or no assessment growth.

Loss of assessment can be more easily absorbed when growth in assessment is significant. Where there is little or no growth, the loss in assessment has a much greater impact.

Growth is not inevitable in northern Ontario. I hear all the time about the growth in assessment in southern Ontario. It is certainly not inevitable in northern Ontario, and there are a number of areas throughout northern Ontario dependent upon only one industry and with little hope of

growth. As that industry prospers, so goes the tax support for education.

I say this tongue in cheek, yet with some honesty: if the additional grant proposed by the province is the solution to problems created by pooling, the ministry should pass these grants to the separate school boards to solve their problems and leave the historical division of assessment for public school boards unchanged.

Maximum designation: The maximum proportion of assessment that may be designated by a nonpublic corporation or a business partnership should be determined by the number of Roman Catholic separate school supporters—you have heard that here today—rather than the number of Roman Catholics, as proposed. We in Sault Ste Marie have a number of Roman Catholics who support the public school system. The Sault board supports the Ontario Public School Boards' Association position in that regard, and you have heard that earlier in your sessions.

The Chair: Will there be questions from the committee? We could spend another couple of minutes here and not ask Mr Findlay to wait. We have to be upstairs in five minutes. How does the committee want to deal with it? Do we want to come back or just ask Mr Findlay to sum up?

Mr Allen: I am happy to come back.

The Chair: Apparently the committee would like to come back and have a chance to ask questions. I am very sorry to have to do this, but votes take precedence over everything. Thank you.

The committee recessed at 1758.

1814

The Chair: Mr Findlay, would you like to sum up? We have really rushed you off very quickly. For the purposes of Hansard, and for our own purposes, you were going into page 7, were you not?

Mr Findlay: Yes.

The Chair: I would ask the others who are not involved with this presentation if they could go into the hall. It would help us considerably. Thank you. Mr Findlay, you have presented under the most difficult circumstances of any presenter. I am sure you will be remembered for that.

Mr Findlay: I do not know whether my hearing is leaving me. I am having problems.

While the ministry plans on phasing in the grants to counter the effect of pooling, it will be impossible in a few years to determine whether the grants provided were sufficient. Of course, the merging and changing of figures as the years

progress will cloud any meaningful calculations. A board would have considerable difficulty today in determining the current effect of separate school extension begun just two or three years ago.

The ministry should provide a benchmark base from which a board each year would be able to determine the amount of additional grant resulting from pooling in order that the funding assistance would not disappear prematurely.

At the bottom of page 7 I have given you the present assessments of the board. I will not read those. Move over into page 8, which is about ceilings.

In the Sault Ste Marie Board of Education we have spent \$5.5 million elementary and about \$3.8 million secondary in overceiling expenditures. That is about \$9.3 million total, which is 100 per cent locally funded. In terms of the city of Sault Ste Marie residential mill rate, the expenditure over ceiling represents about 25 mills or one third of the board's total city residential mill rate of 75 mills.

Reducing the board's share of commercial and industrial assessment will mean approximately a 25 per cent decrease in the local assessment support for those overceiling expenditures less additional provincial grants subsequent to the implementation of pooling.

In the guarantee legislation, there is no provision for the guarantee that you will not suffer a loss. We question how the 13 boards, one being Sault Ste Marie, will be compensated. No one seems to know at this point. Since the ministry has verbally promised that no board will suffer, we ask that that promised compensation be written into the legislation.

You will note that we say "in addition to any other grant or other grant increases," so that we separate out that general or annual grant increases are not counted in it.

Boundary changes: I read where most of this change would affect northern Ontario boards. We realize that in the province there is an accumulation of various mixed and overlapping boundaries between public and separate boards. We are concerned in the Sault about the further dilution of the board's assessment base and the quality of education offered.

Our board is concerned with the lack of specific information on the proposed process on boundary changes. We would like an impact study to determine what financial losses and assessment losses we will experience there.

Within our boundaries there are 12 unorganized townships which are not part of the

separate school zone. Those are townships without municipal government. The residential assessment of these townships is \$4.2 million and the commercial is about \$15.5 million for public school support.

Our best guesstimate at this point is that with the implementation of boundary changes, the board estimates a loss of about a third of the total residential assessment, or \$60,000 in lost revenue, as well as approximately one third of the commercial assessment, or \$260,000 in lost revenue. This is not part of the pooling legislation or the figures that were presented by the ministry in May.

Under provincial support for boundary changes, again there is no provision in the legislation for grants to offset any boundary changes and we feel that the board's area of jurisdiction will feel and shoulder the brunt of that potential loss. A change in separate school boundaries, to us, is an expansion of the separate school system rather than an extension.

There is a lack of specific information on boundary change process and the Sault board requests the government to commit itself to guaranteeing that grants will be provided for any loss in the change of boundaries, as has been requested with pooling.

On page 10 we talk about viable education. We are concerned about the probable effects of boundary changes on providing a viable education in northern parts of the jurisdiction. Enrolments in these unorganized townships are generally small and competition for these students could increase the cost of providing a viable education. Other yet unforeseen impacts such as school closures, busing or possibly opening a new school by the separate board could create extra costs because it will then want to share that assessment in the unorganized townships—those 12 I talked about.

So the demands for separate school education will change when these ratepayers are given the opportunity to designate their assessment as separate school supporters. Of course, they will demand services from the separate school that we, the public board, now provide. With a small pupil population that again makes it very difficult and very costly.

1820

On the last page I have given conclusions. They are not listed as recommendations; they are just points.

1. The ministry should provide school boards with more current impact figures on the effects of

pooling. That is, it has used 1988 and it should be right up to date.

2. The ministry should provide additional provincial grants up to and only to school boards with a negative figure indicated under the net revenue impact before assistance. That is in the attachment 1 column in table 1.

3. The ministry should make provision for identifying the additional provincial grant as a result of pooling for each of the six years.

4. We would like to see monitoring in the growth in overceiling expenditures in relation to the loss of assessment to the separate school.

5. Amend the proposed legislation to provide for promised compensation.

6. The ministry should provide an impact study to determine the assessment and financial losses to public boards as a result of boundary changes. I do not think anybody has done that yet.

7. The ministry should guarantee that grants will be provided on an ongoing basis to offset loss of assessment because of change in boundaries.

8. This is really the main point: that no boundary changes be implemented until an accurate assessment of the financial and educational impact is made.

In light of the cumulative loading of all the other types of expenditures coming down the pike and then the loss of the residential assessment with the boundary changes and the loss of pooling, which I understand will be 1 January, we are most concerned about where we will be financially in the coming years.

I appreciate the opportunity of appearing before the committee on behalf of the board. Thank you very much.

The Chair: Thank you very much. I have given a little more flexibility to this particular presentation because it was interrupted. Are there any short questions?

Mr Grandmaitre: I have a very short one. On page 9 you are talking about your boundaries, and I know that Sault Ste Marie is totally surrounded by unorganized townships. These people are using your services—school services, municipal services and so on. How does that work?

Mr Findlay: The board does have assessment from that area which it uses to raise educational taxes.

Mr Grandmaitre: How about municipal though?

Mr Findlay: For municipal purposes, yes, we also use that assessment. As you may know, the

Sault Ste Marie board acts as a municipal council in unorganized townships. We are the only tax collecting body. It is a little bit unusual for a school board. We have a tax department, a tax collector, we send out tax bills—that type of thing. So we set up recreation committees to provide recreational services. We have helped our volunteer fire department obtain property, property we have taken under tax registration. That is a wee bit strange from a school board operation, but nevertheless, that is what we do.

We also set up polling booths for election of trustees. We do that as well in the unorganized townships as a municipal council.

Mr Grandmaitre: Maybe this is not in context, but would it not be better if the Sault were to expropriate these 12 unorganized townships so they amalgamate? I do not want to start a fight.

Mr Keyes: It would become the largest city in Ontario.

Mr Allen: I am not sure I really want to ask you this question. I would rather hear something from ministry officials with regard to whether there are in fact any plans afoot to somehow incorporate what has just been referred to, the losses in these unorganized assessment areas where the expansion of boundaries has made significant impacts. Are you preparing something in the legislation that will address those elements?

Mr Riley: I am afraid I cannot specifically answer for the case of Sault Ste Marie, but I can say we are not insensitive to this type of problem. It is unique, but it is not entirely unique. It is a question of the financial effect of the boundaries revisions. I do not believe the Sault board is the only one in northern Ontario that is potentially experiencing this type of problem.

I am afraid I cannot give you details about that, but we are certainly sensitive to that type of problem and have taken it into consideration. Unfortunately, I was not primarily responsible for the boundaries portion of the bill, so I cannot help the committee too much more than that, but I know that how the boundaries are expanded in northern Ontario is a matter that has received some special attention.

Mr Allen: To the best of your knowledge, there is not a formal amendment coming forward addressing that particular question?

Mr Riley: No, I do not believe so; not to my knowledge. I believe one may not be necessary in order to accomplish the result here. I am not sure

it is necessarily something that will have to be dealt with legislatively.

Mr Allen: Do you view it as a kind of erratic factor that is difficult to incorporate in a formula or do you view it as a fairly regular factor that you can readily incorporate in a formula?

Mr Riley: It is erratic, all right. I know we had situations where to expand the boundaries, as we were doing generally, would have had the effect of either requiring new boards to come into existence or one of two small separate boards to disappear—this type of thing. If you took the logic to the extreme, you ran into all kinds of problems here and there in northern Ontario.

We are certainly not going to go to those extremes where there is going to be a large financial impact on these relatively small boards. I am not sure I can help you much more on that.

The Chair: Are there no further questions? Thank you all very much for being so flexible. I apologize again for any confusion my comings and goings today may have caused. We will be meeting tomorrow afternoon at 3:30 to begin clause-by-clause discussion of the bills at hand.

The committee adjourned at 1828.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Keyes, Kenneth A. (Kingston and The Islands L)

Stoner, Norah (Durham West L)

Substitution:

Marland, Margaret (Mississauga South PC) for Mrs Cunningham

Clerk: Decker, Todd

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Pond, David, Research Officer, Legislative Research Service

Witnesses:

From the Timmins Board of Education:

Nicholls, Jim, Chairman

Anton, Irene, Director

From the Ministry of Education:

Lenglet, Brian, Senior Manager, Policy/Legislation Liaison

Bowers, Alan, Education Officer, Legislation Branch

Riley, Michael, Counsel, Legislation Branch

From Cochrane-Iroquois Falls Black River-Matheson Board of Education:

Michon, Raymond, Director of Education

Peterson, Barry, Accountant

From the Metropolitan Toronto School Board:

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Ladouceur, Anne, Chairman, Metropolitan Toronto French Language School Board

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Silipo, Tony, Chairman, Toronto Board of Education

Brown, Charles, Director

From the Ontario Public Education Network:

Gunn, Joe

McEwen, John

Kenny, Wallace M., Legal Counsel; with Hicks, Morley, Hamilton, Stewart, Storie

From the Sault Ste Marie Board of Education:

Findlay, Lorne H., Superintendent of Business

Témoins:**Du Conseil scolaire de langue française d'Ottawa-Carleton:**

Bégin, Fernand, vice-président de la section catholique

Racle, Gabriel, président de la section publique

Lalonde, Aurèle, président

From the Metropolitan Toronto School Board:

Ladouceur, Anne, présidente, Le conseil des écoles françaises de la communauté urbaine de Toronto





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Legislative Assembly of Ontario

Standing Committee on Social Development
Education Amendment Act, 1989

Second Session, 34th Parliament
Tuesday 28 November 1989



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 28 November 1989

The committee met at 1550 in room 151.

EDUCATION AMENDMENT ACT, 1989 (continued)

Consideration of Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment.

The Chair: I call to order the meeting of the standing committee on social development for clause-by-clause consideration of Bill 64. We have legal counsel with us this afternoon, Frank Williams from the Ministry of the Attorney General, and there are other officials at the back.

Sections 1 to 17, inclusive, agreed to.

Mr Allen: Madam Chair, I just want to indicate to you that because of Mr Johnston's difficulties that have arisen in the last few days, we do not have a set of amendments. I will be responding to some of the amendments that do come on the floor, but you will bear with me if I feel that it is necessary for us to hold something over if there seems to be a problem that requires our attention as a caucus.

The Chair: All right. I will do my best to do that. I had hoped and thought we might be able to finish this bill today and that was the intent and hope as we began, but I understand your position.

Mr Allen: I would hope that as well. I am not saying there is any matter that necessarily will fall in that category, but if it does, out of just an abundance of caution, if I can borrow the term from another debate, you will understand.

Section 18:

Mr Keyes: Madam Chair, may I ask that Mike Riley be brought to the table so that he can work with these? Many of these are extremely technical in nature. The amendments we are looking at today do not in essence change the intent of the bill or the principle, but a change of a single word does help to clarify it and responds to concerns raised by presenters over the last two weeks.

The Chair: Mr Keyes moves that section 18 of the bill be amended by adding thereto the following subsections:

"(2a) Subsection 103(4) of the said act, as amended by the statutes of Ontario, 1988, chapter 27, section 15, is further amended by,

"(a) striking out 'and the board shall be deemed to be an urban board and' in the fifth and sixth lines; and

"(b) striking out 'an urban combined' in the sixth and seventh lines and by inserting in lieu thereof 'one.'

"(2b) Subsection 103(5) of the said act is amended by striking out at the end thereof 'and the board of the combined separate school zone shall be deemed to be an urban separate school board.'"

Mr Keyes: As a small note of explanation, members, I hope, have been given the section of the Education Act that we are amending by this. It was there for distribution.

Mr Jackson: We would like to see it in the context of the larger act.

Mr Keyes: That is why I asked today that we do have a note. I believe it is in official parlance, we are not allowed to file with the clerk those that show the explanation notes. But I have asked that it be produced, taking a section of the act, and we have included that on the bottom.

Mr Jackson: It would be a nice rule to bend, Ken.

Mr Keyes: As a novice at this, I do not want to bend the rules.

The Chair: Do you want any explanation from Mr Riley on this particular item?

Mr Jackson: Could we read it first, Madam Chair?

Mr Keyes: The fine print at the bottom is the copy from the Education Act.

Mr Jackson: Could I encourage Mr Keyes's suggestion that we invite legal counsel for the government to explain in more detail the notions of trustee representation in urban combined separate school zones?

Mr Riley: The purpose of this amendment is simply to remove a reference to the term, namely "an urban separate school board," which we have otherwise removed from the act. It is really in the nature of a housekeeping amendment to remove this concept that has been removed elsewhere from the act in a couple of other places where we found it appears. It is a concept that is no longer necessary. It is simply superfluous as part of the boundary changes that we contained in Bill 64.

Mr Jackson: It is superfluous because of another amendment, or is it superfluous because it is housekeeping?

Mr Riley: It is superfluous because of another amendment.

Mr Jackson: Then it does speak to the issue of trustee representation. What is changed by this? I am interested in understanding that before I vote.

Mr Bowers: The concept of an urban separate school board is removed from the lexicon of separate school boards. The provisions for trustee representation for school boards in urban municipalities are continued through the provisions of the act where it is appropriate. What we have done, and what has been approved by the committee in approving sections 12, 13 and 14 of the bill, is to remove the existing references to the urban separate school board.

We have fixed the provisions for representation of that the two urban separate school boards with which we deal. The Metropolitan Separate School Board we are deeming a county-combined separate school board so that its representation will continue under section 7a. The urban separate school board in Parry Sound, the whole Muskoka east and west Parry Sound area, is subject to a ministry review with a view to having a separate school board of some kind or another deal with the whole geographic area.

There is no expectation that there will be an urban separate school board in the province for the 1991 elections. Therefore, there will be no need to continue the provisions. We do have a grandparenting provision in this bill that continues the Parry Sound urban separate school board with its current membership so that that is not disturbed. But this particular amendment removes references which are consistent with sections 12, 13 and 14 of Bill 64.

1600

The Chair: Is Mr Bowers's explanation sufficient? Some of you may remember that Mr Bowers is the person who worked very closely on Bill 125. Trustee representation has been part of his bailiwick for a long time.

Mr Jackson: That is all well and good, but it has been a year and a half since I have dealt with the bill and it does not come back as quickly, even though I was a trustee for 10 years.

Motion agreed to.

Section 18, as amended, agreed to.

Sections 19 to 28, inclusive, agreed to.

Section 29:

Mr Keyes: There are two sets of amendments to section 29, from the government and from the Progressive Conservatives. The numbering is such that I believe we are looking at the same area of amendment. I will read through the one we have which basically coincides with the one that has just been distributed from the Progressive Conservative Party.

The Chair: Mr Keyes moves that subsection 126(5) of the act, as set out in subsection 29(4) of the bill, be amended by,

"(a) striking out 'Roman Catholics' in the second line of clause (a) and inserting in lieu thereof 'separate school supporters';

"(b) striking out 'Roman Catholics' in the second line of clause (b) and inserting in lieu thereof 'separate school supporters.'"

That is very similar to that which is presented by the Progressive Conservatives through Mr Jackson. Is that correct, Mr Jackson?

Mr Jackson: It looks quite similar to me.

Mr Keyes: This is in response to the representation we have heard over the last three weeks by the majority of groups who expressed the desire that this more truly reflect the wishes of the different presenters. That is why this amendment is so framed.

Mr Jackson: Given it is similar to the one which we have proposed, and in response to concerns expressed up to and including as late as 6:15 pm last night, we will support the amendment.

The Chair: It is a little less verbose than the one that has been presented first. I presume you are satisfied with that.

Motion agreed to.

The Chair: We have another amendment to section 29.

Mr Keyes moves that subsection 29(5) of the bill be struck out and the following substituted therefor:

"(5) Subsection 126(6) of the said act, as re-enacted by the statutes of Ontario, 1981, chapter 47, section 21, is amended by,

"(a) inserting after 'given' in the first line 'by a corporation under this section';

"(b) striking out at the end thereof 'except that, upon appeal, if it is ruled that the notice is not a proper notice, it is void, and the assessment commissioner shall so notify the corporation and mark the notice accordingly.'"

Mr Keyes: As a note of explanation, this change was put in so that—as you recall, it was also brought to our attention yesterday that a minor technical error in the wording of an

assessment notice from the assessment commissioner's office could have rendered void for a full year the direction of the taxes to the area to which the individual wanted them. Therefore, taking that out, the end of the line will allow for the appropriate correction to be made if there has been a technical error in the notice, and tax can therefore be directed in the area they wish it to be.

Again—I would ask, if it has not been delivered, that it be so—the subsection of the Education Act, 126(6), I have also had printed at the bottom of the page.

The Chair: May we have that distributed, please.

Mr Keyes: Mr Decker, I do not believe you have distributed all of those. Did you? With your permission, then, I will ask that they all be distributed, because there is the relevant section that we have taken out in each case.

The Chair: Are there any comments, questions or discussions while that is being done? You do have them copied, do you?

Mr Keyes: Yes, they are. I merely felt it would be much more appropriate to have the actual sections of the Education Act.

The Chair: I think that is quite helpful. I am happy that you have done that.

Mr Keyes: I think that the collating of the material that we have just distributed to you is in such inappropriate order, shall I say, that it is the very last one on the bundle handed out that gives the one to which I am referring.

Mr Jackson: Could I better understand clause 29(5)(b), what the implications of striking out the appellant mechanism is and the notice by the assessment commission? I missed that.

The Chair: Mr Keyes—or did you want Mr Riley?

Mr Keyes: Let me try one and Mr Riley can correct it. Brought to our attention yesterday was that if it went to appeal, if it ruled that the notice was not a proper notice, if there was just a technical error on it, then it was not able to direct the taxes for that whole year. You would have to live with the error of that. What we are doing is taking that out now so that any error of a technical nature that has been made in the assessment notice, when brought to the attention of the assessment commissioner, would allow the tax to be directed appropriately as, shall I say, the owner of the property had desired.

Mr Jackson: Is there a parallel with regular assessment appeals and notices? I am trying to determine if the original language was inconsis-

tent with the Assessment Act or whether your amendment conforms with the existing Assessment Act.

Mr Riley: It conforms with it in the sense that we have not touched the existing Assessment Act mechanism, appeal procedure. This that we are removing here was a phrase introduced into the existing legislation as a result of case law quite some time ago that held, in effect, that the notice had to be perfect, or very nearly so, in order for it to be effective for the year in which it was given.

It caused little, I guess, mischief under the old regime, because the old section 126 was not utilized or was not as significant in that public corporations, for other reasons, were not able to use it. It caused relatively little mischief.

1610

I used it as a model in drafting, but now under the new scheme, it should not be there. We do not want the slightest technical fault in the notice to be cause for the notice to be rendered void for an entire assessment year. So the assessment mechanism in the Assessment Act is not being touched. We are sort of removing a limit to its full operation by removing this. I am sorry, I am not—

Mr Jackson: No, no. I am just impressed by the way in which you put tax collection and being more efficient at it in such as positive vein.

The Chair: May I consider this amendment to be carried, since you are so impressed with efficiency?

Mr Jackson: No, I am impressed with the way he presents it. I may not necessarily agree with it.

Motion agreed to.

The Chair: The next amendment I have is to section 30.

Mr Keyes: I still have an amendment to section 29.

The Chair: Did you just do clause 29(5)(a)?

Mr Keyes: Yes.

The Chair: You did not do clause 29(5)(b).

Mr Keyes: I have done subsection 5, but I now have one to subsection 29(6a).

The Chair: I do not seem to have that in my pile, sorry. Somehow that got missed in my grouping. It is an amendment you have to subsection 29(6).

Mr Keyes: moves that subsection 126(6a) of the act, as set out in subsection 29(6) of the bill, be amended by striking out at the end thereof "except that, upon appeal, if it is ruled that the notice is not a proper notice, it is void, and the

assessment commissioner shall so notify the partnership and mark the notice accordingly.”

You also have had a reference to that in the three-page handout you gave us to the act.

Mr Keyes: Mr Riley, will you give me assistance on subsection 126(6a), because I am trying to find it in my pile.

Mr Riley: I believe it is the middle page in the bundle handed out. I apologize for the confusion, but it is there, I believe. It should be.

Mr Keyes: Yes. If you are looking at following your bill, it is subsection 29(6) of the bill. In essence, it is following through exactly what we have just finished doing in the other one prior to it. Correct?

Mr Riley: That is correct.

Motion agreed to.

Section 29, as amended, agreed to.

The Chair: The next amendment I have, as I stated earlier, is to section 30.

Section 30:

Mr Keyes: I have an amendment to section 30. I note also the Progressive Conservatives filed one as well. I am not sure, but I think we are right on the same area.

The Chair: Mr Keyes moves that the definition of “public corporation” in subsection 126a(1) of the act, as enacted by section 30 of the bill, be amended by,

(a) striking out the word “a” in the second line of clause (b) and inserting in lieu thereof “any”; and

(b) striking out “an affiliate or” in the fourth line of clause (c) and inserting in lieu thereof “a.”

Mr Keyes: Again, this responds to issues and concerns raised yesterday by presenters. It makes clear that if shares of a corporation are traded in any public market anywhere in the world, then it will be a public corporation for the purpose of determination of school support. There were some persons who expressed that the word “a” is a limiting one and that “a market” did not mean the same as “any market,” so that is a technical correction to clarify that it is any market anywhere in the world. That is the point of the first amendment.

The (b) portion ensures that nonpublicly traded corporations that are controlled by an individual or a corporation which also controls one or more public corporations are not themselves defined to be public corporations.

Mr Jackson: Perhaps we could get legal counsel for the government to explain if any difference exists between the amendment that I

have proposed and that which the government has proposed in substance or intent.

The Chair: Do you want Mr Riley?

Mr Jackson: I suspect Mr Riley would be the best one to respond to that.

Mr Riley: The purpose of these amendments—yours is the second in the bundle of—

The Chair: It states “Progressive Conservative” at the top right-hand corner.

Mr Jackson: He has that. It is the second one, “I move that section 30 of the bill be amended by the addition of the word ‘or’ to the last line of clause (a) of the definition....” Public corporations.

Mr Riley: I am not sure what that would accomplish. I see, you are striking out clause (b) altogether.

We do not believe that would be advisable. Clause (b) does continue to have some effect where there may, for instance, not be an equivalent status. If you look at clause (a), it refers to, for instance, “a status comparable to a reporting issuer under the law of any other jurisdiction.”

There may be jurisdictions where there is either no equivalent status whatsoever or something that is a status but is not very equivalent, let’s say. There may, in other words, be situations where a company is, in fact, trading its shares on a published market in that jurisdiction, but due to the differences in legal systems between the jurisdictions, there may be a no-equivalent status in that jurisdiction. Thus, something is needed in order to continue to make such a corporation a public corporation, because its shares are being traded and thus the same rationale applies as to why it should be so treated as a public corporation.

It is just that we feel that clause (a) does not cover all of the possibilities that we wish to include, possible types of organization, given the differences in legal systems in jurisdictions around the world.

Mr Jackson: I guess the difficulty I have is that the vagaries of the Ontario Securities Commission in no way, in and of itself, should represent comfort to our assessment personnel responsible for monitoring this bill. In fact, it will be even more difficult, which possibly can invite certain forms of litigation and appeal.

My instincts tell me that when government has its doubts about specific vagaries, when the government may try to go out and capture more, in effect, without really understanding how it is going to do that, I would rather err on the side of

caution. That is why I proposed that we omit, at this point in time, clause (b).

I think it is going too far, obviously, by the intention of my amendment. I am disturbed by the vagueness with which this is written, and your words do not give me added comfort, I am afraid.

Mr Riley: If I may respond, I would suggest that there are more vagaries if we drop clause (b) out. The reporting issuer definition and adding the equivalent status thereto under other jurisdictions is going to leave, as it were, a rougher edge than if we do as we have here.

I am not sure I agree that the words of clause (b) are vague. That is a matter of opinion. They are, I think, clear and susceptible to legal interpretation without a great degree of difficulty. As I mentioned, as you are aware, they are not without precedent. They are drawn directly from the Securities Act. They are not something we have invented here for our own purposes. It is not entirely new.

We do think they are necessary, as I say, to catch things that the "reporting issuer plus equivalent status thereto" may not catch, such as I have mentioned, where there may perhaps not be an equivalent status or not an appropriate equivalent status in another jurisdiction. I think in the end it draws a smoother line than would be drawn if we simply left "reporting issuer plus equivalent status thereto."

1620

Mr Jackson: You did not consider amending definition (a) for public corporations to try to strengthen that?

Mr Riley: I do not think that would be possible. That would be an exercise in trying to fill in specific gaps or deal with specific perceived lacunae in that definition and I think would be, if anything, more complex.

There is a high degree of overlap between (a) and (b), but I think it is the only reasonably concise way of describing what we intend to describe here.

Mr Jackson: May I suggest that I table my amendment and we deal with that first and then revert to the government amendment? That is the standard procedure in these circumstances, I believe.

The Chair: The other amendment is already on the floor. As I understand it, it has to be dealt with first.

Mr Keyes: May I make a humble suggestion? I realize that under parliamentary procedure you are correct in saying we must deal with the

amendment before you, but I believe that—legislative counsel may agree—if we ask for consent to consider this amendment, since it is dealing with the identical one, we could deal with it and then, subject to that, return to the amendment before you.

Mr Jackson: I might reasonably argue that my amendment was not recognized, since it deals with clause 126a(1)(a), while Mr Keyes's refers to clause 126a(1)(b).

The Chair: The way in which I will deal with it is, I would request unanimous consent that we postpone Mr Keyes's amendment and we deal with yours first. I think that would be most appropriate. We could postpone it until after we have dealt with Mr Jackson's. We will deal with the other one immediately following.

Agreed to.

The Chair: Mr Jackson moves that section 30 of the act be amended by the addition of the word "or" to the last line of clause (a) of the definition of "public corporation" and striking clause (b) of that definition.

Mr Jackson: I have spoken to that.

Mr Keyes: I would just say that I would speak against the amendment on the basis that our legal counsel does believe it is much clearer to retain (b) in the legislation and lends more clarity to it than having it omitted. For that reason, having considered the amendment, I would oppose it.

Motion negated.

The Chair: We are back to the amendment we were dealing with originally on a similar issue and section of the bill.

Mr Jackson: Could I simply ask if this was in response to a recommendation from staff or from one of the deputations?

Mr Riley: This was in response to representations, actually two different representations. Clause 126a(1)(a) deals with the concern expressed that clause 126a(1)(b) might not be perceived as applying to any market anywhere in the world. Among the cost submissions was the suggestion that clause 126a(1)(b) could be interpreted as not to apply to all markets anywhere in the world. In addition, the removal of "a" in the second line, replacing it with the word "any" seeks to ensure, if there was ever any doubt, that what we refer to here is a market, any market, anywhere. It is sufficient in order to render a corporation a public corporation, that its shares be traded on the public market anywhere. That is the point of 126a(1)(a).

Clause 126a(1)(b) refers to—I think this also arose out of certain submissions made—the concern that was raised that the inclusion of the concept of affiliate in clause 126a(1)(c) was to some extent casting our net too broadly. We recognize the force of that argument.

Imagine for a moment an individual who controls a public corporation and also controls one or more private corporations which have not gone public. As we had it, by leaving in the reference to affiliate, all those private corporations would also be rendered public corporations for our purposes. When an individual controls these private corporations, he is in a position to be able to designate. There is no inability to determine shareholders because the shares are publicly traded. Since this was an instance of casting our net a little too broadly, we are retracting on the affiliate question.

Mr Jackson: Could I ask counsel to react to the amendment which I have before you? It would be a renumbered clause 126a(1)(c) since my recommendation clause 126a(1)(b) was defeated. How do you react to the relationship between that motion and that which Mr Keyes has tabled, recognizing this now would stay as renumbered clause 126a(1)(c)?

Mr Keyes: That is the point I was going to raise. I think that makes them identical. That is why I was going to suggest even a division of the vote on this one and that we deal with the clause 126a(1)(a) vote first, which has been explained. When you come to clause 126a(1)(b), as I would read it, we have taken out the very words which you, Mr Jackson, in the second half of your amendment have also taken out. You have taken out “an affiliate or” in essence, and said “a subsidiary of a body corporate or two or more bodies corporate.” I think we would be very consistent then in what we have done.

The Chair: Mr Riley, I think both these gentlemen would like you to comment.

Mr Riley: I think they are very close to being identical, but I believe there is still a difference in the references to subsections.

Mr Keyes: Of the Securities Act.

Mr Riley: I think in yours, Mr Jackson, you have referred only to subsections 1, 3 and 4 of the Securities Act. As I have it, we have left in other references of subsections 1, 2, 3a, 4, 5 and 6. The reason for so doing, in my view, is that we do not want to consider a corporation to be a public corporation simply because it is an affiliate of a public corporation.

This is a little difficult to explain. We are left with “controlled by” or “subsidiary of” as the basis for connection, the way subsection 126a(c) operates. Those terms themselves depend on a reference to the concept of “affiliate.” In the case of “controlled,” I believe in some circumstances the term “affiliate” is used. I do not want to remove it there if there is any question.

Second, I would say that these subsections taken together form something of a bundle. There is a lot of tax case law around this. I would rather leave them as intact as possible. I am not sure I have explained that very clearly. It is a rather complex series of subsections and we would be well advised to leave in those references to the other subsections in the bill and remove only the words “an affiliate or.”

1630

The Chair: Is that sufficient, Mr Jackson?

Mr Jackson: I can agree that the difference in the two amendments is how far we are casting our net here. There is a simpler way of putting what you just said to me.

Mr Riley: That is the basic difference, yes. As to the difference between your amendment and the government motion, I am not sure exactly.

Mr Jackson: By limiting certain sections of the Securities Act, are you making a general comment or are you specifically aware of the ones I have omitted?

Mr Riley: What I say applies to each of the ones you have omitted. Subsection 1(1), I believe, is a definition section, and subsection (3) and subsection (4), if my memory serves, are the ones describing controlled and subsidiary, I believe. It really is hardly more in my mind than a question of almost a drafting question. I think it would be appropriate to lead the references into the other subsections, but not have affiliate status itself as the basis for rendering another corporation a public corporation.

Mr Jackson: It is a poor compromise, but a compromise none the less.

Motion agreed to.

The Chair: Mr Jackson moves that section 30 of the bill be amended by the addition of a new subsection:

“(7a) The Lieutenant Governor in Council shall in each year make regulations pursuant to clause 10(3)(a) of this act for the purpose of ensuring that no public board suffers a loss of revenue by virtue of the implementation of this section.”

Mr Keyes: I thought perhaps Mr Jackson wanted to speak first in favour of it. If not, I will.

The Chair: Mr Jackson, did you want to speak to this amendment?

Mr Jackson: When I pick myself up off the floor.

Mr Keyes: I said I would speak to it.

Mr Jackson: I forgot for a moment your background in public education.

It is very clear that this amendment simply sets out that which the government has enunciated as its stated position. It did so on Bill 30 and it allowed itself to enshrine virtually identical wording in Bill 30, for which one or two members in this room were present for that historic piece of legislation.

We now come to probably phase 3 of an important element of separate school funding in this province and we have still the utterances from the government of the day, but for some reason we have an avoidance of enshrining it in legislation. It has been stated that, just as governments change, so do ministers and those who are held accountable for those promises.

Clearly, this is one point which absolutely every public board made, and to date we have not heard an objection from a single separate board in terms of objecting to this language. So the only people to date whom I have heard who object to this are the very people who would assure the rest of the world who is asking for it, that it is unnecessary. This is an unusual set of circumstances in the political arena.

Mr Keyes: Speaking against the amendment, there are two things I want to say. If we were to enact the amendment as is shown here, which says, "...ensuring that no public board suffers a loss of revenue by virtue of the implementation..." you would not be changing by one iota the actual discrepancy or inequity that exists at the moment.

We have had three ministers of the crown speak to the guarantee to boards that there would be no net loss of revenue to a board, and with the Treasurer (Mr R. F. Nixon) and two ministers of Education making that commitment, I believe that that is a very adequate commitment to be made. Those persons who came before this board and made some similar presentations and representations to that effect, even themselves, in talking about guarantees, still referred to net loss of revenue.

This amendment would not do anything to address the inequities of the current situation with regard to the assessment and the taxes derived therefrom. Therefore, I cannot support it in this form, and I would not even if there were a friendly amendment made to it.

The Chair: In addition to that statement, Mr Jackson, I really do have a question about this motion being in order in that it does specifically direct an allocation of funds, which is not part of the bill and is really out of order under the circumstances. Certainly the way you explained it, I think it is out of order.

Mr Allen: Can you explain that again?

The Chair: Well, it is specifically—

Mr Jackson: First of all, is that your ruling, Madam Chair?

Mr Allen: What is your ruling? The explanation seemed a bit turgid. Sorry.

The Chair: It goes beyond the bill and specifically directs funds that are beyond the purview of the bill.

Mr Allen: How do you define the purpose of the bill? The purpose of the bill, presumably, is reflected in the statements of the minister in the House.

The Chair: I said purview of the bill, not purpose.

Mr Allen: The purview of the bill, as described by the minister in the House, was that it was accompanied by full assurances that there would be no loss of revenue in the implementation of this legislation as far as the public boards were concerned. That is part of the purpose, part of the purview. It is stated; it has been repeated. It is difficult to understand how that is not part of this legislation. How this goes beyond that is not understandable to me.

The Chair: I think it ties in with what Mr Keyes has just said: that only the minister himself or herself may direct public funds, and a bill may not do that. This is actually directing in a very specific way. "No public board suffers a loss of revenue" indicates some kind of data being collected and funds being applied as a result of the data. That is where I am getting my ruling.

Mr Jackson: You would even rule the collection of data out of order?

The Chair: No, no, I certainly would not.

Mr Jackson: Then what does that have to do with it?

The Chair: I am trying to explain. Only a minister could make the amendment you are making, simply because it has to be somebody from the executive council who would direct the funds that would be necessary to fulfil this amendment.

Mr Jackson: I would request that we stand down the section until we can get some legal

advice on the matter, instead of challenging the Chair.

Mr Keyes: Madam Chair, is there not another way to deal with it? I am not that practised in the art, but perhaps legislative counsel may make a suggestion. Why do we not just deal with the amendment as you have placed it before us?

Mr Jackson: I have made a motion to stand down my own amendment.

Mr Allen: I would second that.

The Chair: I have made a ruling and I think it has to be either upheld or not upheld. That is the way in which these items usually are dealt with.

Mr Jackson: If that is your ruling, I challenge the ruling.

The Chair: All right. Those who are for the ruling? Those who are against the ruling? All right.

Now we still have this motion before us. May I consider the amendment carried?

Mr Keyes: I am sorry, Madam Chair, you ruled it out of order. There is no amendment before you.

The Chair: Okay. I am sorry. There is nothing there now. That is correct. Sorry.

If I may go then to Mr Jackson's motion, still on section 30, would you like to speak to this, Mr Jackson?

1640

Mr Jackson: I would like to read it into the record.

The Chair: I think that is likely a good idea.

Mr Jackson moves that section 30 of the bill be amended by the addition of section 30a:

"30a. The said act is further amended by adding thereto the following section:

"126b(1) In this section

"'small public corporation' means a public corporation which has no more than 10 shareholders, no more than one of which is a public corporation.

"'nondirectable assessment' means the portion of the total assessment of a small public corporation which bears the same proportion to that total assessment that the number of shares of the small public corporation held by a public corporation bears to the total number of shares of the small public corporation issued and outstanding.

"'directable assessment' means the portion of the total assessment of a small public corporation other than its nondirectable assessment.

"(2) The nondirectable assessment of a small public corporation in a municipality shall be

entered, rated and assessed in accordance with section 126a as if it were the total assessment of the small public corporation and the provisions of that section apply mutatis mutandis to the small public corporation in respect of its nondirected assessment.

"(3) The directable assessment of a small public corporation shall be entered, rated and assessed in accordance with section 126 as it it were the total assessment of the small public corporation, and, subject to subsections (4) and (5), the provisions of that section apply mutatis mutandis to the small public corporation in respect of its directed assessment.

"(4) In applying subsection (5) of section 126 to the directable assessment of a small public corporation, the calculation of the total number of shares of the small public corporation issued and outstanding shall be made without regard to the shares held by a public corporation.

"(5) A public corporation which holds shares in a small public corporation shall have no right to vote or otherwise participate in the designation by that small public corporation of its directable assessment under section 126."

Mr Jackson: We received several briefs that spoke to this issue. One of the concerns is that this will have a major impact on small public corporations if small business that entertains the need for risk capital involves itself with the bank. The bank in turn becomes somewhat of a shareholder to secure its assets and therefore the bank determines where the assessment is directed by virtue of its relationship with the new corporation.

This is a rather common feature, and I think it was not well thought through by the draftspersons of this bill. The concept has been referenced by the government that this does extend the net even further. Given that there is some doubt as to how far that net is going and its impact, I would rather err on the side of caution at this point in time and not examine two or three years down the road that we have created a series of problems, not only for the government in monitoring and collecting and transferring for the bill, but also for the public generally in understanding the implications of this section. Each of those amendments speaks in one way or the other to the concern I have more generally expressed. Perhaps legal counsel would like to talk to it.

Mr Keyes: I would ask that legal counsel comment on it because, when you refer to the number of shareholders, you are not in any way talking about the actual size of the corporation, from what its holdings are, as such. You could

have a very, very large equity in a very small corporation by using a definition of up to 10 shareholders. I was not really convinced that is what you are attempting to protect. It sounded as though you were trying to protect the very small family business, let us say, where perhaps you have two people as shareholders, the wife and yourself, and you have only two shares in the company.

But here you are saying no more than 10 shareholders, no more than one of which is a public corporation. It could be a very vast type of empire you are dealing with, and I am just not sure this amendment provides the type of assistance you are looking for. I would like Mr Riley's comments.

Mr Riley: Yes, I agree with Mr Keyes's concern. I think we were aware that venture capital see capital as a common or very frequently encountered feature of today's financial and commercial world. My main concern about this amendment would be a concern actually for the Ministry of Revenue in its ability to—as far as we are advised, as far as I know, the ministry has no mechanism for determining public corporation shares or shares of anyone in given corporations.

The scheme we have here is one which places the onus essentially on the government, on the Ministry of Revenue particularly, to go out and attempt to find public corporations. They have been working on this for several months now, working in close collaboration with the Ontario Securities Commission and exchanging information with the commission.

This information is not available primarily to the Ministry of Revenue. Obviously it can be brought forth by other parties, no doubt, but we do have a scheme here where the Ministry of Revenue, the government is primarily responsible for finding the public corporations. This, I suggest, is something that they have no ability to find.

If I am not mistaken, these provisions look familiar to me and I believe—I may be wrong—they are drawn from another jurisdiction in which the onus on finding public corporations is with corporations. The onus is placed on them. This is not a characteristic of our legislation and would be, in my opinion, out of place in our bill.

Third, I suppose it just adds generally to the complexity of the whole legislative package and I think there is a concern here that—

Mr Jackson: You are doing well enough on your own without me contributing to that. Is that what you are telling me?

Mr Riley: I think the concern you have expressed is legitimate. I realize that, but we are going in the direction of further complexity, which will only tend to have a drag effect on the whole legislative package if it is put into force. Those would be my concerns about it.

The Chair: Any further questions or comments? May I deem that this proposed amendment is carried?

Mr Keyes: No.

Mr Jackson: Oh, sure. Give us one.

Mr Keyes: We have lots yet.

Mr Jackson: Where is your generosity, Ken?

Mr Keyes: I will give you one.

Mr Jackson: I doubt that.

The Chair: I only heard one against one. May I take a hand vote on this? A voice vote does not seem to be sufficient here.

Mr Keyes: I said no, it was not carried.

The Chair: Yes, and the other person said yes.

Mr Keyes: Madam Chair, just on a point of order.

The Chair: I guess a tie is here.

Mr Jackson: That defeats them.

The Chair: Yes, a tie defeats them.

Mr Keyes: The ayes are defeated.

The Chair: We are giving everybody a chance to vote here.

Mr Keyes: Just on a point of order, Madam Chair: I am not used to the system in committee when we are doing clause-by-clause. Do we ask for a vote yes or no on them, rather than just consider them carried? I am not sure. I just thought "in favour" and "against" gives us a quick, ready reference. Is that not the way you normally do it?

The Chair: Yes. I was doing it, but because most other people seem to be just a little bit away from the scene, I was asking that we have a little stronger voice. The bells are a request for a quorum, but we are fulfilling our obligations by being here.

We will go on to the next amendment, which is in section 43. In the meantime, I would like to ask if I may—

Mr Keyes: Madam Chair, for the record, did you declare that defeated?

The Chair: Yes, I did declare that one not carried.

Motion negated.

Mr Curling: What are the bells for?

The Chair: The bells are for a quorum only.

Mr Jackson: Do you hear bells, AI? There must be a strong wind in here and I do not have my toque on.

Mr Keyes: It has ended, so it must be okay.

1650

The Chair: I am not sure. I was given one message. I thought it was the correct message.

There are sections 31 through 42 that I would ask if we may consider carried.

Mr Jackson: I have an amendment to subsection 126a(11). Did you miss that one?

The Chair: Is there another one that I have missed? Do I have that? I do not seem to have a copy of that.

Mr Jackson: Subsection 126a(11). Am I out of sequence or am I in sequence? I was on section 126a, which is in section 30 of the bill, adding a new subsection 11. Do you have it?

Mr Keyes: Yes, I have it.

The Chair: I do not have a copy. That does not mean that there is not one. It is not in order in my pile. Does everybody have this now?

Mr Jackson moves that section 126a of the bill be amended by the addition of the following subsection:

“(11) The assessment commissioner shall determine the amount of the assessment which without the enactment of this legislation and regulations made under it would have been entered into the assessment roll for the public board in each municipality for which the public board has jurisdiction and which due to the enactment of this legislation is transferred and entered into the assessment roll for the separate board or boards which have jurisdiction for those municipalities. The assessment commissioner shall inform the secretary-treasurer of the public board, in writing, of the amount of assessment which has been so transferred by the enactment of this legislation and the regulations made under it.”

Mr Jackson: Basically this is an amendment that deals with the issue of accountability and auditing. It is an auditing track. It is done by assessment commissioners on a municipal basis, reporting through the clerks. It is not a major financial exercise or costs associated with it, but it will reinforce the integrity of the minister's statement that he in fact is willing to ensure that no public board suffers a loss as a result of this legislation. It is an impossible statement to make

unless we can agree upon some benchmark and that that measuring tool is in place.

As many members of this committee presently are also members of the select committee on education, which just recently dealt with the issue of financing in education, this amendment also speaks very strongly to some of the recommendations that were placed in that report, which has yet to be made public. However, the spirit and the intent and the purpose of the principles of accountability with respect to public funds, especially on the issue of education, is very important to all parties and partners in education. I am quite confident the government will appreciate, as will the auditor and the many other people, that these kinds of clauses are being encouraged in legislation.

Mr Keyes: I think this seems to be putting an undue onus on the assessment commissioner to try to provide this type of detail to each public board of every municipality and jurisdiction. I think the information will be available for any secretary-treasurer of a public board who wants to obtain it by going through the assessment rolls of the municipality once they have been filed. But to put into legislation that it is a necessity that the assessment commissioner must make that public on an annual basis, and I believe that is the intent here—correct me if I am wrong, Mr Jackson—

Mr Jackson: No, that is incorrect. The intent of the motion is simply to ensure that the calculation will be made and shared with the board, purely and simply, not to take out an ad in the paper, not to formally go into a report, which will be published, I guess, in this day and age in both official languages and given all sorts of coverage. What it is there for is to simply ensure that the school boards are not advised that: “You have access to come in between the hours of nine and three o'clock, Monday through Friday, to manually take down the information. You are free to put the staff in place to monitor or measure what this calculation is.”

This is all a computerized function. A printout can be made with a simple modification to the computer program. That information would be made available to public school boards to give full force and meaning to the intention of your government. That is all it is. It is basically so that the assessment commissioner cannot say: “Look, we are too busy. Go away and bug us another day.” It is simply to say that this is information that is of value not only to the Minister of Education, but also should be made available to public boards.

Mr Keyes: I believe that it would be available for those secretary-treasurers of boards who wished to obtain it.

Mr Jackson: Not unless there is a specific request to format it. There is no requirement to have it formatted in this way. Even the minister him or herself does not have to request that it be formatted in that way unless we suggest that it be formatted. If anybody has done any work with assessment appeals, if the format is not in the computer, you are at liberty to look through piles and piles of returns. You are welcome to look at the calculations. We do not want public school boards taking full-time salaried people to sit down and work out a manual system when a computer program can be modified in a very short time at no real expense, so that that printout is made available.

If your concern is about access, I can assure you that there is no access unless it is directed. If you do not want the information made available, that is a whole other issue. I can assure you that to suggest that the assessment rolls have contained within them the information that is requested, they do not unless the calculation is presented for them. That is a simple calculation which can be done by the computer.

Really we would want that factor to come from the assessment commissioner and not to be at variance with what the minister perceives is one set of figures and the public boards think is another set of figures. We almost contribute to the problem by suggesting the format should be left to a manual process at the expense of public school boards.

Mr Allen: I want to strongly support what Mr Jackson has proposed and the explanation that he has just given. As I understand it, it reflects the facts of the matter.

What I want to underline is that it seems that this is a wise precaution which, if I were in government, I would want to make. This is in some respects the nub of the whole issue of the debate over this bill with regard to what we have heard in numerous presentations from public boards about the whole question that hangs over the assurance that the minister has given with regard to the fact that he says there will be no loss entailed to either the public system or the individual public boards.

If we want to walk into the future after this piece of legislation is passed and look forward to the submission of endless grievances, of altercation and backbiting over that particular statement of the minister and the extreme difficulty that most boards would have in ascertaining whether

it had or had not been lived up to, then I think we would be in an unfortunate state of affairs.

Yesterday, the last presenter made a statement that after Bill 30 had been passed and three years had elapsed, it was very difficult for the boards to know whether or not the ministry had lived to its obligation which it had stated and laid on itself that there would be no loss to the public boards.

This is a very simple mechanism to make certain that that happens, that it is seen to happen, that the statistics are there, they are clear and provided in an indisputable fashion. It simply fleshes out the minister's statement and his promise and avoids a lot of trouble down the road. I think it is a very wise proposal, and I urge the government in its own interest to accept the amendment.

The Chair: Does any one else have a comment on this particular amendment as suggested?

Mr Keyes: I would ask Mr Riley to comment on it while he is thinking about it, or Mr Lenglet.

1700

The Chair: I thought Mr Lenglet was going to comment. I was going to open it any other member of the ministry who wants to make a comment.

Mr Keyes: I have just one comment, and that is I believe that the ministry has already said that for the year 1990, once the assessment rolls are returned in early 1990, that information will be made available to all boards. That, in essence, achieves the same thing that is being requested here in subsection 126a(11). But I will ask both Mr Riley and Mr Lenglet to comment.

Mr Riley: I have a more technical concern about the reference in this amendment to this legislation and regulations. I think that might become problematic, because if this is a proposal to add a subsection to section 126a, at the end of the amending process this will all simply sink.

It will appear on the face of the Education Act and appearing there, when consolidated, will be a question of what legislation and regulations are being referred to. I think in that sense, there is a problem there, but I understand obviously what you are getting at.

The Chair: Would you suggest where it would be better placed then, Mr Riley?

Mr Riley: I think one would have to come up with some alternative way of saying "this legislation and regulations." I am not sure what that would be. It would not be a question simply of putting a subsection somewhere else; that would not help the matter. You have to come up

with a different way of saying "this legislation and regulations." That is one concern anyway. I think my understanding too is that the—

The Chair: Are you suggesting it would either be misunderstood or lost in its presentation?

Mr Riley: I am suggesting that if it entered the Education Act in this form, it would say, "without the enactment of this legislation," and I guess the interpretation would be the Education Act. So it becomes kind of nonsensical. I think there would have to be another way of referring to the specific amendments to this act, or some of them anyway; some other way of saying that concept of "this legislation and regulations." So I think there is a defect in that respect.

The Chair: Does any other member of the ministry want to add anything at this particular moment? There seems to be something here that most people think is going to happen. I suppose it is a case of whether it is going to be written into the bill or not and how it is going to be written in or if it can be written in. I guess that is the question we are into right now.

Mr Jackson: I do not think the members of the committee are qualified to react to that question. Given that I am not hearing an objection on the overall intent and substance of the amendment but rather the manner in which it is worded, then I would invite the support of the government in assisting us with clearer legal language to achieve the same.

This is a request that we could have made during committee time. However, since this whole bill has been compressed so severely, I have been unable to attend to it, not being a lawyer by trade, which I consider a great asset, but not at the very moment. If there is no objection, then I would recommend we stand that down until we get the ministry's assistance or until I can, perhaps in 24 hours or so, get the independent counsel to assist me with proper wording.

The Chair: There is a suggestion by our clerk that we could do something here with the date 31 December 1989. Perhaps he would like to speak to it himself since I am having a little bit of difficulty fitting in what you are saying with what he is saying.

Clerk of the Committee: I was just thinking that the changes that you are wanting to capture an explanation of to the boards will occur on 31 December 1989. So you could have the calculations made on the basis of the way the act stood prior to 31 December 1989, because those calculations would not have been made if Bill 64

had not come into force on 31 December. The effect of the act would be different prior to and after 31 December.

Mr Jackson: I have no doubt that there is proper wording floating out there somewhere. The clerk gives me further confidence that this is possible to get and probably with not a lot of delay, so perhaps I may suggest that we stand down this section and get—

The Chair: It is hard to stand down this section because it is not there right now. This is an addition.

Mr Jackson: Then we stand down that section—

The Chair: The whole section?

Mr Jackson: —until such time as I can resubmit the revised wording of a new subsection 11, or whatever section it is deemed by legal counsel would be advisable in order to insert what may be loosely referred to as a monitoring and reporting provision for the effects of this bill.

Mr Keyes: Again, there was no reference to—that is why my misinterpretation before did not put a time as to when that assessment transfer is to be. I understand Mr Jackson's designation that it be on the onetime snapshot type of thing we talked about, which will be on the basis of the 1989 rolls that will come in the early part of 1990, and that this is the picture sort of thing you are trying to get at and have provided here.

Mr Jackson: Yes, it would be for the six-year period, which is a further deficiency in the wording, which you can appreciate. We just finished public hearings less than 24 hours ago and I just saw your government amendments. I assumed you would have one in there on accountability, so I scrambled to put one together.

The Chair: What is the wish of the committee regarding standing down this entire section?

Mr Keyes: I have always tried to be co-operative. I hesitate to do so on the basis that the government has already agreed to provide this information exactly as requested. Instead of being in the legislation as they are putting in here for an amendment, it then goes into the Education Act that it will be provided at that period of time. Maybe Mr Lenglet would like to speak to it.

The Chair: Is there serious consideration to having this in regulations?

Mr Keyes: Mr Lenglet would like to speak to it.

Mr Lenglet: I just want to clarify that for the purposes of the calculations we carried out in May 1989 to determine the amount of gain and loss of each board, it was necessary to identify the amount of assessment that transferred. As I had said previously, it is our intention to provide the information following the return of the assessment rolls in exactly the same fashion. I would just support Mr Keyes' comment that we are already intending to do this and the format of it will be as it is in the printouts of May 1989.

Mr Jackson: That is only for one year. I would want it for each of the subsequent years for the six-year phase-in. That is what would be the intention, but there is also the fact that we have Ministry of Education assurances about something that is performed by the Ministry of Revenue. That is another matter altogether.

Mr Lenglet: If I might just comment on that, after the first year, to put into legislation a specification that assessment is going to have to be recalculated presupposes that those public corporations that will no longer have the right to designate are going to have to in some way make a designation. That information will no longer exist.

The Chair: I have a motion requesting that we stand down section 30 until we have further information or wording on a new subsection 126a(11). Is that motion carried?

Mr Keyes: No.

Mr Jackson: What have you done? You are not going to accept—

The Chair: I have to place a motion because you have made a motion. I have to take a motion from you requesting standing down that requests the consent of the committee.

Mr Jackson: So we are back to this motion again.

Mr Keyes: Right.

The Chair: Yes, I guess that is correct. We still have the amendment as presented by Mr Jackson. Does anyone have any further questions or comments on this particular amendment as presented?

Mr Keyes: Just the comment that Mr Jackson's second statement makes me all the more concerned and opposed to it because I asked the question originally whether this was to be something done each year, and the answer came back that no, it was not to be an annual thing, that it was going to be done once. Now his comment just came back and he said it will be done each year of the six-year phase-in period. Therefore,

that does become a much more onerous one. As Mr Lenglet has just explained, that type of information is almost going to be impossible to determine.

1710

Mr Jackson: As has been explained, this only deals with the one year. I said it could potentially be expanded, that if we were going to refer this to legal counsel it was a matter they could discuss, but on the face of it this merely deals with a onetime snapshot of reporting by the assessment commissioners to the secretary-treasurer of each public board.

Mr Allen: I think, first of all, that there is a problem with respect to the time reference. I am not sure that would be too difficult to insert as far as the language goes, to make it apply for the six years in which this section will be in effect. That would cover the time frame.

The Chair: You are going somewhat beyond what Mr Decker suggested, is that correct?

Mr Allen: Yes. I think he was assuming this had a onetime application and that therefore it was important to date the date at which the event would happen, unless I misunderstood him. Obviously, the date of coming into force of this legislation would be the governing element in any case as far as the implementation of this section, as with the rest of the bill, is concerned. This is quite easily amendable with the insertion of the language "for the six years in which this section will be in effect." Then it will be of course implicit that this was the language that would apply within the context of the Education Act as a whole and should not therefore be a problem.

If there was a problem with regard to the regulations, as was referred to earlier, I think by Mr Riley, then one could simply strike the last words after "legislation and the regulations made under it," which would be implied in any case because it is the government's prerogative to draft and implement the regulations and they would be pursuant to the section. So that is not a problem.

I understand what you are saying with respect to the recalculation, but one is going to be gathering the information with respect to the status of corporations and partnerships and all the stuff you have been talking about annually in any case, in order to make the calculations for the purposes of the bill. Why is it a problem therefore to do that and use that information at the same time to calculate what the assessment and

therefore the taxation derived would be, year by year, throughout the six years?

Mr Lenglet: The problem is that if we were looking in the third or fourth year to a new factory being built, what we are suggesting here is we are telling the assessment commissioner, "We want you to calculate what the assessment split between the public and separate boards is under the new rules, but we also want you to figure out what they would have been if that corporation were still designating."

That corporation will be under no legal responsibility any longer to attempt or to decide whether it wishes to determine the number of Roman Catholic shareholders, so in fact it will make no attempt at all to do so. We are asking the assessment commissioner to compare a nonexistent position to a current position for that new business.

Mr Allen: Then I have to ask the question, how is the minister going to implement his promise? How is it possible for him even to make that promise? If he cannot make the promise, why is he making it?

Mr Lenglet: We are taking a snapshot of the assessment as it was at the time of the return of the roll for 1990 and basing the figures on that. In fact, if you look at the—

Mr Allen: That has never been the qualification in any statement I have heard the minister make on this subject. There have never been brackets after it that said "only with reference to 1990."

Mr Jackson: So there is going to be no calculation in 1991 or 1992 and you are just going to run the figures out from the 1990 base. Is that how it is going to work?

Mr Lenglet: We look at the amount of assessment, the changes at the point of time of the return of the assessment roll in 1990. That will be the base piece of information for the calculation. If you look at the impact studies, they were produced on that basis. They determined what the six-year change was, or what the impact of the change was if it all happened in one year and then it says: "It will not happen in one year. It will happen in six years, so take everything and divide it into six parts." In fact, those numbers follow exactly that model.

The Chair: Would you like to say what will happen in 1991 since it seems to be a concern of Mr Allen.

Mr Lenglet: The amount of money indicated in the impact study is an increment of the same magnitude as occurs in the first year. In other

words, if the total impact were \$6 million, it is one sixth of that, \$1 million, in the first year, and in the second year it would be that \$1 million plus a second \$1 million, or \$2 million.

Mr Jackson: There is no provision for inflation.

Mr Lenglet: There is in that impact study only the extension of the idea that if it all happened in one year, it would look like this. If you took that and put it over a period of six years, one sixth of that would happen each year.

The Chair: So that is the implementation plan. Any further suggestions, questions or comments on the amendment as it stands?

Mr Jackson: If in fact, then, the only singular snapshot becomes the basis for calculation, where is the reluctance in order to have it reported to the public and separate boards?

Mr Lenglet: From my perspective, all I am saying to you is that this is exactly the information we have already provided an estimate of, and that we fully intend to provide approximately a week after the return of the assessment rolls.

The Chair: Which is some time in mid-January, I understand. Correct?

Mr Lenglet: It is 26 January for the return of the assessment rolls and we are anticipating we will have the information following that in about a week.

Mr Jackson: You do not have any objection with the notion of reporting to the boards?

Mr Lenglet: We have always fully anticipated that we will be returning information to the boards on the amount of assessment change because of the change in designation rules.

Mr Jackson: How soon will that occur?

Mr Lenglet: I believe we should be in a position to provide—the information does not exist until the return of the assessment rolls, which is currently scheduled for 26 January, and we anticipate about a week after that we will have the total information from the Ministry of Revenue.

Mr Jackson: What adjustments are going to be made for any appeals?

Mr Lenglet: At this time there is no plan to make adjustment for appeals. There are changes to that roll because of appeals, but there are also additions during the year. We are looking at the snapshot as it occurs off those rolls. Now, if anything significant followed that, I suppose we would have to look at it again, but right now we

are looking at those numbers as they appear on that roll.

The Chair: We have this amendment before us and we have had several bodies of discussion on it and we have had several interventions of clarification from ministry officials. Are we ready to—

Mr Jackson: No, I am not. I am concerned that the government has legal counsel at its disposal and we do not have at our disposal any advice, whether legal or otherwise, to assist this amendment in order for it to comply with what I understand is not that objectionable. We are deficient in terms of that support. I am not quite used to that in a committee setting. Could I inquire how I can rectify that, save and except giving me an opportunity to rework the amendment and sufficient time in which to do that.

The Chair: We have already had one attempt to postpone consideration in the stepping down, and that being defeated I do not know where there are any other alternatives, or anybody else in this room who could give you more assurances. I think we have pretty well exhausted assurances that are available this afternoon. The motion to postpone has not carried, so I have no other alternative that I can see at the moment other than to take a vote on your amendment as presented.

Mr Keyes: Just to reiterate that in much the same way that we have had the commitment made from three ministers of the crown that there will be no net loss in revenue, we are also making the statement that the information that is requested by this type of amendment will be available to all those boards, from what I have just heard, by February at the latest.

The Chair: Mr Williams, do you have any suggestions? You are about the only person I have not called on.

Mr Williams: I was about to interject at this opportune moment that the office of legislative counsel is always available to any member, whether a member of the government or a member of the opposition, to come to our office at any time, preferably a day or two—this bill been in committee now for what? This is the second or third week now that we have been here before the committee.

There is ample opportunity at any time for you to give me a call. My office is always open and available to you, so you can always come and see me if you want. At this stage of the game I am still available, but with the caveat that there is no point in trying to reword something if from a

policy point of view the ministry is not willing to accept it.

If I can get some indication that the ministry is willing to accept some kind of amendment from a policy point of view—if you want to speak to them and then come back to me and say, “Look, this is the way I want it and this is the way we all agree,” then I am willing to give you a hand on it.

Mr Jackson: Could I request a 20-minute adjournment until I have an opportunity to speak to the government. A 20-minute adjournment would also allow me to bring additional members from the opposition for the vote.

The Chair: It is very difficult in that we had hoped to finish this today, but I guess the request is acceptable and is part of the standing orders, so I have to grant it. We will adjourn for 20 minutes. If we all synchronize our watches now, that is to return at 5:40. Maybe we could say up to 20 minutes because maybe some people will be ready before 20 minutes. We are getting close to the hour of six o'clock.

The committee recessed at 1722.

1739

The Chair: I think the 20 minutes are up. I would like us to begin. Order, please, gentlemen.

I am sure that all of you want to do things as they should be done around here, and the 20-minute recess is only granted before a vote or a recorded vote, so I would ask that you abide by that as much as possible.

What is your strategy at this particular moment, Mr Jackson? Are you wanting to place this motion that is before us to a vote or did you want to withdraw it and present something different?

Mr Jackson: Mr Keyes may wish to react, since we have spent the 20 minutes very productively.

The Chair: I am very happy to hear that.

Mr Keyes: Having discussed this with Mr Jackson, I think a more appropriate method is that consideration of this amendment be delayed, be deferred until Monday. Looking at the time of the day and the realities that we must close at six o'clock, the realities of Bill 65 before us, etc, I move that the consideration of this amendment be deferred until the next session of this committee.

The Chair: This is the same one we agreed earlier and I took a motion that it be postponed. You are asking to take another motion of postponement.

Interjection.

The Chair: As our clerk is saying, all of these things are very extraordinary that are being asked this afternoon. With unanimous consent, we can, however, revisit that.

Mr Jackson: With all due respect, I appreciate that is the interpretation. Direction from the chair would be a lot more helpful.

The Chair: I am trying to do that. As I say, with unanimous consent we could use the word "delay" rather than "postpone" and make it into a new motion, if you like. If you have consent to do that unanimously, we will do it. Is that agreeable to everyone then? You are talking about the entire section 30 of the bill, are you, or are you talking about this amendment as presented?

Mr Keyes: I was looking at the amendment as presented.

The Chair: Okay, that seems to be what we could do then. That is a different motion, because we were talking about postponing this whole section, standing it down. All right, I will receive such a motion then that we delay the presentation of the amendment as presented by Mr Jackson and have it as our first item on Monday of next week.

Those who are for that? Okay, that is carried.

Sections 31 to 42, inclusive:

The Chair: The next amendment I have is to section 43, so are there any comments or questions on any of sections 31 through to 42? May I consider those sections carried?

Mr Allen: I wonder if I could ask a question. It does refer to definitions of "assessment" and so on, "business assessment."

The Chair: Would you tell us what section you are referring to?

Mr Allen: In section 34 of the bill, it deals with sections 220, 221, 222 and 223 of the act.

The Chair: Whom would you like to ask the question of?

Mr Allen: I want to simply use that section to raise the question to the government as to why there was a complete failure to respond to any of the amendments proposed by the completion office, which asked simply that some clarifying definitions be inserted around various classes of assessment that this legislation addresses. I wonder if Mr Keyes could respond to that, in general terms.

Mr Keyes: I do apologize; I did not catch the first part of the question. I was conferring with my colleagues, so either restate or perhaps Mr Riley gathered the full intent of the question.

The Chair: Mr Allen, rather than have me rephrase, maybe you would like to summarize for Mr Keyes.

Mr Allen: I think it was more a question to the government than a question to the ministry personnel. I phrased it rather generally, but you were here, Mr Keyes, when the completion office presented a series of proposals around some rather closer defining of partnerships and the various categories of commercial assessment that were being addressed in the bill. There was more than one of those which had at least some appeal, I thought, and I just wondered why the government did not respond in any respect to any of those requests for a somewhat more precise definition.

Mr Keyes: I believe that the definitions as used seem to be fairly all-encompassing, and rather than trying to get into a lot of technical definitions of the ones that you would exclude—and there were a great number of them, as I recall, in that presentation from the completion office as to holdings of churches and it went down a fair list, those used for religious purposes, etc—to kind of embody the degree of definition for those in here becomes much more complicating to the whole idea. It is much better that it be more comprehensive and all-inclusive so that there is just no doubt and we do not leave ourselves open to a lot of legal interpretations, or subject to a lot of legal interpretation, and, frankly, actually the potential for more legal challenges to the bill and the assessment and its direction.

Mr Allen: Does that mean that the ministry will be providing regulations to cover some of those concerns, for example, about how the definitions of a publicly nontraded corporation like the Ontario Teachers' Federation would designate its assessment?

Mr Keyes: I believe that it is empowered under regulations to do such, under section 126 or something, the power to make the regulations, and that would have to be included there—

Mr Allen: Of course there is empowerment to make regulations. I am asking a somewhat more precise question, and that is whether it is your intention to deal specifically with some of those, respond to some of those concerns by way of regulation.

The Chair: Would you answer that at this time, Mr Keyes?

Mr Keyes: It is one that is a bit beyond, perhaps, to try to include them here in the legislation, and the regulations, I am sure—we

can ask staff—have not all been drafted as yet for this legislation, as you can understand. Whether or not they will include it in those regulations can be raised with them, but I would rather go this route and then any changes we make would be done in any reconsideration of the bill next year. Get it on its way and going and then make any changes that are deemed appropriate by the parties.

Mr Allen: Do I read into that that you will be engaging in further consultation with the parties concerned with respect to the formulation of regulations?

Mr Keyes: I think there is a problem on the technical level, perhaps, to try to capture in the 1989 rolls based on which we are going to do these all of those types of issues that were raised by the delegations before us. They may get some of them, but I think it is easier to catch them in amendments the following year.

Mr Allen: Your last remarks raised another question with me which I think is of concern to some of us. You more than hinted that there would be an opportunity a year from now to re-examine the impact of the bill in some formal fashion. Were you indicating to us that there will in fact be a formal review a year from now that will be available to all the parties concerned to see what the impact of implementation has been and to take a reading at that point in a public way?

Mr Keyes: No, definitely not. I am not indicating that at all.

Mr Allen: Definitely not?

Mr Keyes: Not for a public revisitation.

Mr Allen: Are you saying definitely that you did not imply it, or definitely that it will not happen?

Mr Keyes: I did not imply that and did not intend to imply that in my remarks to you. What happens is up to the government of the day and the ministry, etc, but I am just suggesting that even today, subject to the passing of amendments in bills 64 and 65, we have a slight amendment that should be done in Bill 109 in order to tidy up. That is in the act that was passed just fairly recently. There needs to be an amendment in order to make it consistent from the standpoint of boundaries, so that is an amendment I would like to see considered in this committee.

Likewise, I am just suggesting that when this is passed, there may well be from within the government the recommendation that there be a possible amendment in 1990 as a result of this. I think we cannot capture some of those issues in

the 1989 rolls, which will be returned in the very near future.

Mr Allen: I was trying to understand what the member meant when he did use the words "a review of the impact of the legislation a year hence" or words very close to that.

Mr Keyes: No, it was not my intent to suggest that this whole bill would receive a review. My intent was simply to suggest that if the need is seen by the government for a possible amendment in a particular area, it could be done any time after being passed. There was definitely no suggestion of a full-scale review of it.

Mr Allen: I have a sense that there are a lot of unknowns in this legislation and a lot of unknowns about the nature and direction of assessment that will impact on various boards, what the ultimate readings will be in terms of what even the changes have been from the estimates we have been given to date and the estimates that will arise on the examination of the 1989 rolls. I wonder if the member would not consider that a review a year hence, when all this is known much more clearly, would be a good thing, although I know he cannot commit the government to that.

1750

Mr Keyes: Like all legislation, there is always potential for amendment, but I would begin to surmise that it will be up to the government or the minister of the day that such a review be done. I would not even begin to think to make any commitment of that type.

Sections 31 to 42, inclusive, agreed to.

Section 43:

The Chair: Mr Jackson moves that subsection 43(3) of the bill be amended by the addition of a new subsection to section 161 of the Municipal Act:

"(22c) The clerk of each municipality within the jurisdiction of a public board shall determine the amount of taxes which under subsection 22a would be allocated to the separate board or boards having jurisdiction in the same municipality. The clerk shall inform the secretary-treasurer of the public board, in writing, of the amount of tax which has been so transferred under subsection 22a."

Mr Jackson: Obviously, this flows from controversial amendment subsection 126a(11).

The Chair: I thought there was some close tie.

Mr Jackson: Yes, as are the next ones on sections 44, 45 and 46.

The Chair: I guess my question is, have you talked to Mr Keyes about these?

Mr Jackson: Being the generous and open individual that he is, I am sure he will embrace them with equal reservation.

Mr Keyes: Flattery will get you everywhere, but I will simply leave those. Again, in lieu of the five minutes of today left, they will have to be considered subsequent to the other amendment.

The Chair: That is sections 43, 44 and 45. Then there is section 46. The whole works.

Mr Jackson: Yes, and then I have a very long series of amendments to section 47 which deal specifically with the general legislative grants and the manner in which we are designating an equalized assessment transfer or compensatory grants, to have that properly designated.

Perhaps in the interest of time the government can have an opportunity to examine that amendment, which also flows.

The Chair: Do you want to have any comments on any of these or any readings on any of these?

Mr Jackson: No, I suspect I am going to be talking to the ministry at length on these amendments as it is.

Mr Keyes: Do you wish to do an introduction on section 47?

Mr Jackson: No, not at this point in time, in the interests of the hour.

The Chair: I would just like to mention to the committee that we are going to have a subcommittee meeting tomorrow. I have not yet determined what time you are all available, but we are zeroing in on midmorning. It is going to be very important for us to be quite co-operative and I do not want to cut discussion off, so I guess what I am asking is that you do as much homework as possible, because maybe that would have helped somewhat today.

We have the major bill on the pensions coming and we do have very few days left to meet, as you know. We only have six days, basically, for this committee to meet unless we ask for special permission.

We have quite an extensive workload. Next Monday we will likely be taking the rest of this and, hopefully, Bill 65. Then we will go immediately on Tuesday into Bill 66. Tomorrow we will decide how we are going to do that in the subcommittee meeting.

It is a very heavy workload. We knew that when we began and I guess what I am asking is for the best preparation and as much co-operation as possible on all sides.

Mr Jackson: If I might say, such discussions from the chair are historically and quite frequently directed to the House leaders, who are responsible for ordering up the business of this committee.

Second, the matters of teachers' pensions are well in excess of a year old in terms of the government's first public disclosure of that item, as are the matters of pooling, which flow from the speech from the throne, which is a good seven months old.

The fact that both the Education critic for the New Democratic Party and the critic for the Conservative Party, myself, were preoccupied in the Legislature doing debate on teachers' pension bills at a time when our attendance was imperative at this committee to deal with a related education bill is a matter that should not have escaped the attention of the government in ordering up its business, nor should it have escaped the attention of House leaders, in terms of ensuring that we give real life force and meaning to the process of public hearings.

Having come this far, we certainly are not hastened to complete clause-by-clause because we somehow want to be out of here before Christmas. I think it is very important that we do justice to these bills and do them properly, or else we should not have wasted the public's time with public hearings.

All of my amendments flow from those public hearings, and as I have indicated, we are still less than 24 hours from having heard our last deputant.

The Chair: You have to admit that we did agree, though, as a committee, to do it in this manner, to go right from hearings into clause-by-clause, and I think that was a good decision. I certainly do want to be fair. We do have different guidelines this year. It is not a case of rising quite at will before Christmas, it is a case that we have to, because this committee only meets when the House is meeting unless we get special permission. I guess I am asking you to consider whether there are new constraints that we are under. I ask for your co-operation and we will discuss these things further.

Mr Jackson: You do know that the House leaders are talking about evening and morning sittings because of the situation the House leaders find themselves in. Is that something this committee has to look at? I would expect that the chairman customarily will check with the House leaders and the clerk to determine whether those options should be explored in this committee.

The Chair: I have already begun those operations.

Mr Jackson: Additional preparation is helpful if we have access to the legal advice and sufficient time to even digest the information we receive.

The Chair: You have been granted that today.

Mr Curling: I just want to make the comment that I do appreciate your caution and advice on what is before us. I did not see that as any

presumptuousness on your part at all. As a matter of fact, you have reminded us as time goes of the task we have before us.

The Chair: I just wanted to let you know that tomorrow is going to be a day of good decision-making in the subcommittee. That is really what I was trying to say. Thank you all very much. This meeting is adjourned. We will see you next Monday at 3:30 pm.

The committee adjourned at 1800.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT**Chair:** O'Neill, Yvonne (Ottawa-Rideau L)**Vice-Chair:** Fawcett, Joan M. (Northumberland L)

Allen, Richard (Hamilton West NDP)

Cunningham, Dianne E. (London North PC)

Elliot, R. Walter (Halton North L)

Grandmaître, Bernard C. (Ottawa East L)

Henderson, D. James (Etobicoke-Humber L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Keyes, Kenneth A. (Kingston and The Islands L)

Stoner, Norah (Durham West L)

Substitution:

Curling, Alvin (Scarborough North L) for Mr Grandmaître

Clerk: Decker, Todd**Staff:**

Pond, David, Research Officer, Legislative Research Service

Witnesses:**From the Ministry of Education:**

Bowers, Alan, Education Officer, Legislation Branch

Riley, Michael, Counsel, Legislation Branch

Lenglet, Brian, Senior Manager, Policy/Legislation Liaison



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Education Amendment Act, 1989

Ottawa-Carleton French-Language School Board Amendment
Act, 1989

Loi de 1989 modifiant sur le Conseil scolaire de langue
française d'Ottawa-Carleton

Second Session, 34th Parliament

Monday 4 December 1989



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 4 December 1989

The committee met at 1554 in room 151.

EDUCATION STATUTE LAW AMENDMENT ACT, 1989 (continued)

OTTAWA-CARLETON FRENCH- LANGUAGE SCHOOL BOARD AMENDMENT ACT, 1989 (continued)

LOI DE 1989 MODIFIANT LA LOI SUR LE CONSEIL SCOLAIRE DE LANGUE FRANÇAISE D'OTTAWA-CARLETON (suite)

Consideration of Bill 64, An Act to amend the Education Act and certain other acts relating to Education Assessment, and Bill 65, An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988.

Etude du projet de loi 65, Loi portant modification de la Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton.

The Chair: I would like to call the committee to order. We adjourned on Bill 64, An Act to amend the Education Act and certain other Acts relating to Education Assessment, on Thursday of last week in the midst of our clause-by-clause. There was some difficulty with wording on some of the amendments presented by Mr Jackson and he is now presenting amendments. That is what is being distributed at the present time.

I am sorry we are late today. Some of that is my fault. Unfortunately I was in the wrong place for a meeting. We had a subcommittee meeting of this committee and the results of that will be reported as soon as it is possible to do that. That was in regard to how we will proceed with the next bill we have been sent by the government, Bill 66.

Today we are still working on Bill 64. Mr Jackson, are you going to withdraw the amendments that you were presenting last week? Is that which is being distributed now in place of the things you distributed last week?

Mr Jackson: That is correct.

The Chair: Okay. I guess the first thing to do then is to set aside that upon which we were working last Thursday and look at the new

amendments to section 126a that are being distributed at the present time.

Mr Jackson: If I might make a couple of very brief comments, before we set aside my amendments that were tabled at the last meeting I wish to indicate that one of those amendments, I am now advised by legal counsel, would be more appropriately placed in a section which we have already dealt with. So in the process of withdrawing that particular amendment I wish to indicate that my replacement amendment does place it in a section of the bill which we have already voted on. I would need unanimous consent to reopen section 10 of the bill in order to deal with an amendment which I had given notice of.

The Chair: What is your preference?

Mr Jackson: I think legislative counsel, Mr Williams, would like to comment.

Mr Williams: Actually, I would like to clarify. It is really not opening a section of the bill that has been dealt with in the true sense. It is really inserting a new section between sections 1 and 2, which have been dealt with, that amends section 10 of the act. That has not been dealt with in the past.

The Chair: Okay. I guess what I am asking is, Mr Jackson, do you want to start with that or do you want to, as I had suggested, go to section 126a where we were working the other day?

Mr Jackson: We can do it either way, as long as I have an understanding that you are aware that I want to come back to that. Let's deal with section 126a and we will come back to section 10.

The Chair: Okay. I would ask that each member of the committee try to collate these as best you can so that we will be all reading from the same papers. I presume now that we are talking to section 30, section 126a, and the page we are reading is "assessment commissioner to calculate difference."

Section 30:

Mr Jackson: Yes, but I would first like to present that motion, if I may?

The Chair: Yes. I just want to make sure everybody has got it because this is all very technical.

Mr Jackson: I move that section 126a of the act, as set out in section 30 of the bill, be amended by adding thereto the following subsections:

“(11) The assessment commissioner shall in each municipality,

“(a) identify those assessments in respect of public corporations appearing on the assessment roll as returned for assessment in the year 1989 for taxation in the year 1990 that have assessment roll numbers that also appear on the assessment roll as returned for assessment in the year 1988 for taxation in the year 1989; and

“(b) calculate the difference between,

“(i) the total amount of assessments identified in clause (a) rated and assessed for separate school purposes on the assessment roll as returned for assessment in the year 1988 for taxation in the year 1989.

“(ii) the total amount of assessments identified in clause (a) rated and assessed for separate school purposes on the assessment roll as returned for assessment in the year 1988 for taxation in the year 1989.

“(12) The calculation of the difference under clause (11)(b) shall be carried out, with necessary modifications, up to and including 1995.

“(13) The assessment commissioner in 1990 and in each year to and including 1995 shall notify in writing the treasurer of each school board having jurisdiction in the municipality of the difference calculated under clause (11)(b).”

Mr Keyes: I am sure Mr Jackson wants to comment, and I would be quite happy for him to make his comments first, but I have given it a lot of time, thought and study. We have had discussions within the ministry. Again, I would ask Mr Lenglet and Mr Riley to come to the table to be involved with these discussions as well.

I still have difficulties with this. I have tried to reach agreement with Mr Jackson on what it is we are attempting to achieve here. The whole intent of his resolution, as I understand it, was to try to provide information to school boards through varying means—the assessment commissioner and, later on, clerks of municipalities—about these changes in assessment. But there seems to be, in discussions with the Ministry of Revenue, some very serious problem with being able to provide all of the information that is asked for.

1600

I think one of the first problems is that once you legislate something, then of course any errors or omissions you have made in it become very significant from a legal point of view, as is my understanding. Therefore, according to the

Ministry of Revenue, it is almost impossible for it to provide a complete listing as to what the assessment of properties in this whole pool would have been had there not been a change in the designation rules. They insist that in order to try to go over every property in the province individually they would have to have literally, in their words, an army of part-time assistants and staff to do that.

The amendment, as I get it here, may have more clearly defined what could be set out for them, and it is perhaps technically correct to follow this, but following what is here will also leave, I would say, an incompleteness to what is there. That is of concern to me as well, because I think Mr Jackson wants to have, as close as possible, the accurate change in assessment that takes place. If you are trying to compare what was on one year's assessment roll with the next, it does not take into account some of the differences that can occur in occupancy; as an example, for any new tenancies that may have occurred in one year in a building who are different tax supporters from those of the previous year. They may be things that take place and yet you do not really know what impact they have on the change of assessment, how much is attributed to the new formula as set out in the legislation and how much comes about from other changing factors. So it becomes quite difficult.

I think the failure that I see in here is simply the incompleteness of what would be obtained and given over to the municipalities and the boards. Therefore, I want to reiterate—and I would ask the ministry staff to do the same thing—that they are going to estimate the change that takes place, which would be made available to all boards, by calculating a portion of the assessment for the 1988 taxation for public and separate boards and then applying that same ratio or proportion to the commercial assessment for the 1990 taxation year. Then this difference of the sharing of the commercial assessment and the sharing that actually occurred in assessment shift will be said to have been caused by the change in the rules. I think that becomes then a very reliable and accurate—and it is quite easily identifiable as well—set of figures to provide to people.

I believe that—again, I do not want to reiterate—going to the point in the amendment where it may be technically correct in these first instances, it creates a further problem, particularly as you extend that out into those other years, so that clauses 12 and 13 in the amendment to section 30, to me, give further complication to, at

that pont in time, perhaps even the accuracy of what you would be providing, because of these other changing factors whose impact you cannot begin to assess.

I do have concerns. I have given it thought and had a lot of discussions. The staff have had discussions, with Revenue in particular. I find it difficult for me and the government to support this.

The Chair: Did you want to respond, Mr Jackson?

Mr Keyes: Mr Jackson may want clarification from our staff.

The Chair: He would like to speak as well.

Mr Jackson: Yes, I want to clarify a point that Mr Keyes made. It is not the people in front of us who will be making these calculations; it is the Ministry of Revenue people who will be making the calculation. You indicated that people we are about to hear from will be making the calculation. They will not be.

Mr Keyes: I agree.

Mr Jackson: In fact, for the sake of the committee, I want to know if the individuals who are here as representatives of the Ministry of Education are officially speaking on behalf of the Minister of Revenue (Mr Mancini) in this matter. I think the committee should have awareness of that.

The Chair: Are there any representatives of the Ministry of the Revenue? I do not know.

Mr Keyes: I do not know of any representatives here from the Ministry of Revenue.

The Chair: Mr Grandmaitre happens to know a little bit about revenue in this province—

Mr Keyes: A great deal.

The Chair: —and maybe a lot.

Mr Grandmaitre: As a follow-up to Mr Keyes's questions, I would like to ask the mover, the instigator, of these amendments, about the capacity of the Ministry of Revenue. I can tell you that 78 per cent of our municipalities in Ontario have been assessed or reassessed since 1969 or 1970. At the present time, we cannot do more than 45 or 55 municipalities in 1989. That is how low our capacity is. How many of these municipalities have been assessed or reassessed and in what year? I am talking about the capacity of the Ministry of Revenue to do this kind of reassessment, or the discerning of the commercial and industrial assessment. All of our 32 regional assessment offices right across this province are overloaded with requests from

municipalities to update their present assessment rolls. I know I am not answering—

Mr Jackson: Mr Keyes or me, for that matter.

Mr Grandmaitre: I am asking questions, because I cannot see the Ministry of Revenue accepting such an amendment for the simple reason that we do not have the capacity to do so. We cannot keep up with the regular assessment or reassessment of our 839 municipalities. How can we do this without really knowing the capacities of the Ministry of Revenue?

Mr Jackson: I accept the former minister's comment for what he indicated it was, speculation as to whether or not the ministry has the capacity to do reassessments. What we are asking for is not a reassessment; we are asking them to take an existing formula calculation and request the computer systems to create two new categories to pump out the information. I have been assured that it is awkward, but not cumbersome to the extent that it cannot be done.

I have made it clear from day one that I recognize the government's unwillingness to put a guarantee into legislative framework. It based the guarantee on the kinds of data which I have requested in this information. This data will have to be obtained in order for the government to do a calculation. That we have established. All I am asking is that the numbers received by the ministry in terms of doing its own calculation for an adjustment be shared with all public and separate boards in this province. That is all I have asked to have done.

I appreciate Mr Grandmaitre's comments as being somewhat speculative. If he is convinced that the Ministry of Revenue is incapable of that, then it begs a far greater question as to whether or not the government will be able to determine what the difference is. I have indicated that it would be extremely helpful to this committee if we had access to the Ministry of Revenue representatives to be able to cross-examine them and discuss the elements of the bill.

My understanding does not necessarily mirror that of Mr Keyes, who may have been more actively involved in these amendments over the course of the last six days since I first tabled them.

The Chair: Is this the moment when Mr Lenglet would like to make a statement that he would consider helpful?

Mr Lenglet: I will try. I have had conversations with staff at the Ministry of Revenue. I am not speaking for the Ministry of Revenue, but the information conveyed to me indicated that what

is contained in this motion is something it can, with some effort, do, but it will be a strain on resources for doing other things.

1610

Our concern about this particular resolution is that it does not capture enough assessment. In other words, it is a direction to compare from the 1990 roll directly what can be compared on the 1989 roll. Remember, on that 1989 roll, there were no identifiers for public corporations, so what we will have is a partial list, a partial measure of that which we wish to capture.

The alternative way of trying to capture it all is that they would have to hire or obtain the services of an army of clerks to go through all the entries on the 1990 roll and compare them to 1989 rolls, knowing that the property identifiers had changed. Property identifiers change for things like when a particular area of a building was tenanted by a particular business and during the year another business moved in to part of that space. The roll numbers changed and there would be no comparison of that on the run-through of the file as mentioned in this amendment, which is what the Ministry of Revenue can do, so we would be missing all of that.

It has been our intention to find a way to capture the total difference in the assessment roll as it would exist due to the implementations of Bill 64 and Bill 65. We believe the most appropriate way to do that is from public information related to the assessment proportions that existed in 1989 in a municipality between the public and the separate board, carrying those proportions over into 1990 and looking at the new roll, enlarged as it is through growth, and applying those proportions as the starting point and looking at the actual roll. What is returned is the difference. We believe that this gives us a good measure of the total impact of Bill 64 and Bill 65 and that we can work from those figures to provide the guarantees which were indicated in the impact studies of May 1989.

Mr Jackson: I will be up front and show my confusion. My understanding was that the government had six days to look at this. We had an understanding that, at first look, it was going to be somewhat difficult for the Ministry of Revenue but that the Ministry of Education did not object. I now understand from Mr Keyes that he is now, all of a sudden, having difficulty with these amendments.

The Chair: If I understand what Mr Keyes has said, it did not seem to be all of a sudden. I guess that is my only comment.

Mr Jackson: Well, he has been involved in these discussions. I talked to the minister directly about it and I have been talking to ministry staff directly. If the minister has not consulted with his parliamentary assistant, then that is another matter. I merely wish to indicate that I have a series of assumptions which you and all parties encouraged us to establish. A lot of staff time has been put into developing these amendments and a lot of people have worked very hard in the last six days. I was talking to some lawyers as early as eight o'clock in the morning, trying to intervene with them to go over some of these points.

I understand that the main objection, which is the strain on resources, has been covered. This can be calculated.

We are not going to hear from any other government members, but if the official position, as advanced by Mr Keyes, is that he is now unwilling to support this, after I had that understanding, then I am going to need a 20-minute recess in order to talk to the minister again, because that is not the understanding we had.

The Chair: I do not know where that is provided for in the rules of order unless we are going to call for the vote at the present time.

Mr Jackson: I do not see anybody else jumping up to comment.

The Chair: That is what I am going to check right now. Are there any other comments? I wondered if Mr Riley felt there were any contributions he could make.

Mr Riley: I do not think really I can add anything from my point of view beyond what Mr Lenglet has said.

The Chair: Do you want to make a comment, Mr Keyes?

Mr Keyes: I do not want to belabour the issue. I just want to clarify, for the record, I will go back and check Hansard of last week. I do not recall making a statement to the fact that I accepted the amendment. We were looking at an amendment for the first time. I did indicate that it presented some interesting approaches to the assessment and it has changed, not dramatically but significantly, in order to be technically accurate and possible from the point of view. We agreed to set everything aside until today. I do not want to have anyone assume, unless it can be shown in Hansard, that I said I accepted the amendment. It was simply one I wanted to look at.

I have communicated with the minister on a number of occasions since we last met and have on three occasions today also discussed with him

about what was considered by staff and myself to be the incompleteness of the information that would be obtained by using this method of calculation. That incompleteness leaves me of a mind that it does not merit our support.

The significant information will be provided and the calculations will be made by the Ministry of Revenue. It was mentioned last week that the Minister of Education (Mr Conway) would be pleased to make available to all school boards the information on which they determined their calculation. I say the same thing. It has been said that if they wish that, it would be made available to them. Then, it is up to the boards. They can get it themselves from the commissioner, those same two figures based on the principle that is in the bill.

I want that clarified for the record.

The Chair: I think you have clarified your position.

Mr Allen: I want to apologize for the absence of our Education critic, who is undergoing a surgical procedure and will not be here this week.

I have been a little bit puzzled as I have read this, and Mr Jackson is clarifying this. The two subclauses of (i) and (ii) under clause 11(b) read identically. There cannot be a difference between them. I am not sure what the problem is.

Obviously, I think this is a laudable purpose and something that, in one form or another, is critically important for the boards to have a sense of how they are coming out of all this.

Second, we want to have something in place that is workable. There is no point doing something that does not capture all the assessment that should be compared. On the other hand, there is no point in doing something that, in order to get all the information, requires such a huge army of personnel that at the end of the day you have invested far more than the project under any reasonable expectations would warrant.

Is there not some other way of cutting through all this and arriving at approximately the same position without going through a year-by-year calculation? Could you help me? Is it possible, having done the 1988-89 stuff for the run and then the 1990 year implementation, to hold in abeyance any compensation factors other than the normal compensation, as the ministry has proposed to do, until the five years have elapsed? Then, in that final year, a calculation could be done to see what the change has been at the end of the period and average that through the years in order to come to some rough measure of where the boards are and what additional compensation is needed, if any.

The problem, first of all, is information, but the problem at the end of the day is that, if the calculations have not kept the boards abreast of where they are, what has become of them in terms of inflation and in subsequent growth and so on over those years, then there is a base or a reason for some further consideration of additional compensation in order that they may not have suffered any loss at the end of that time.

Is there some other mechanism that makes it possible to do this without turning a whole army of personnel loose on all these figures for five years in succession and having made perhaps an overinvestment in something?

1620

The Chair: Is there someone in the room who thinks they can help Mr Allen? Who would like to try? I do not really think there is a difference at this point, whether it is a committee member or a ministry official. Mr Grandmaitre is going to try.

Mr Grandmaitre: I think the fairest way, and I appreciate Mr Allen's approach, is a rough estimate. I think it is the only way we can do it, by using percentage. That would be the easiest way to go about it and that is what we are offering. We will be using percentages for the next five years. I trust the minister, I trust the ministry that after five years, nobody will be punished for it. I think the way we are trying to do it is the easiest way and the most reliable way at the present time, by using percentage.

Mr Keyes: I just think that Mr Allen has touched on the very issues that make it very difficult, particularly under these amendments of clauses 12 and 13. I am doing it on that basis because of the growth factor to take place in a majority, in many boards—they do not have to be in the majority—there will be a growth in assessment factors. To try and determine what it might have been had the bill not been in place becomes, frankly, a real guessing game.

Then the changes that we have talked about and the tendency of buildings that are owned by public corporations, what they might have remained and what they are now, as you expand it out, becomes a hypothetical type of situation. I just want to reiterate, I think, that the system proposed will be accurate, and granted, perhaps not as accurate as though you had hired the army of clerks to look at every piece of property, but it will be very accurate and it will also be verifiable by the parties involved in this by looking at the percentage that is there. That is why I must stay with that.

The Chair: Mr Jackson, have you been able to answer the original intervention of Mr Allen regarding these two clauses being identical?

Mr Jackson: Yes, I need to further amend or correct, but it will be presented as amendment. Subclause 11(b)(i) should be further amended to indicate, as I read it into the record, to change "1988" to read "1989 for taxation in the year 1990" instead of "1989" and include the word "and" as a connector between subclause (i) and subclause (ii). So change "1988" to "1989," change "1989" to "1990" and insert the word "and."

The Chair: Are there any further comments, questions or discussions on this proposed amendment?

Mr Jackson: I have listened carefully to the comments, and I know that members would not want to confuse the issue here. Having spent considerable time with the public hearings and, prior to that, with discussions with the ministry, it is clear that what I am recommending in clause 11(b) is essentially what the government has indicated, that it would be making its calculations in such a fashion. It has never been the government's intention to state otherwise, so there is nothing offensive about clause 11(b). Clause 11(a) is a direct result of discussions with the Ministry of Revenue. I mean, certainly I have the right to request that the Ministry of Revenue come and attend these hearings in order to put on the record the public assurances which they have transmitted that they could live with clause 11(a) and, in fact, that it is workable. We have already heard from a Ministry of Education representative to say that it can do it with some limited strain on resources, but it can be done.

The Chair: I have a lot of trouble with this request at this moment, Mr Jackson.

Mr Jackson: I know you do and that is why I am not formally making it. I did make it a week ago when I indicated that I find it absolutely unbelievable that the most major surgery performed on assessment in this province's modern history is being conducted without a single representative from the Ministry of Revenue present. I put that on the record, and that was an invitation to encourage someone from that large ministry to attend and be available as a resource person. We realize they are not here.

The Chair: Yes, I think if you would have made a formal request, Mr Decker and I could have acted upon it.

Mr Jackson: I wish the record to show that those discussions of the last six days have borne, in my opinion, a good, acceptable compromise to the government. That is what I was advised. It may not be an acceptable situation to Mr Keyes,

but I have attempted to address his concerns, the fact that not the entire amount of assessment is being covered here.

It does not include nonpublic corporations or partnerships. They are not currently registered in the system and that is why they are not there. We are not going to subject either ministry to the intense calculations that might be involved there. These are not intense calculations, but they would be accurate calculations.

The government has stated a guarantee which, by definition, is difficult to reconcile with the notion that averages should be sufficient. I ask that subsections 11, 12 and 13 be divided and that we have a recorded vote on each.

The Chair: That request is granted. We are ready to vote on section 30 of the bill, subsection 11. Recorded vote?

The committee divided on Mr Jackson's amendment to section 30, which was negatived on the following vote:

Ayes

Allen, Cunningham, Jackson.

Nays

Elliot, Fawcett, Grandmaitre, Keyes, Roberts.

Ayes 3; nays 5.

The Chair: We will now vote on clause 12 under section 30. Those who are for acceptance as presented?

Mr Jackson: I hate to bring up the obvious, but if subsection 11 was defeated, it is hardly relevant to now put in clause 12 and 13.

The Chair: You asked to have them voted on separately. I thought you likely knew the result, so I wanted to—

Mr Jackson: No. I did not think the government was going to welsh on its deal. This is a substantive issue. If it is going to play these kinds of games with opposition members on something as substantive and sensitive as the pooling of industrial and commercial assessment for public and separate school boards in this province, it is obvious that school boards are in for a rough ride when the minister makes his ultimate wild guess as to how much the compensation fund is going to be for public boards.

I was asking them to vote on subsection 126a(11), which were matters which their own government has stated it has no objections to. I heard the objection to the five years. Therefore, clause 12 could have been modified so that, at least, the snapshot could be taken in one year.

This is just absolutely unbelievable. The fact that it could be notified in clause 13 to both boards would have been quite acceptable to the government. But this government has chosen, first of all, to vote against putting the guarantee in writing, and now the whole issue of accountability in terms of a calculation, when I have taken a week and a lot of people have put in a lot of effort, working extensively in order to make sure that the Ministry of Revenue was satisfied and the Ministry of Education was satisfied. Then I have it all come down to an arrangement like this because Mr Keyes is not happy with it.

There is absolutely no integrity in the approach on this thing. It is obvious it is going to be railroaded through, come hell or high water, for public school boards in this province. It is just a tragic, tragic end to what a lot of people are concerned about; that is, that public education is getting a raw deal in this province—a real raw deal.

The Chair: Mr Keyes, would you like to respond?

Mr Jackson: There was nothing offensive about clause 11, and you know it.

Mr Keyes: I have to take exception, because Mr Jackson is challenging my integrity as a member of the committee, from his statement, which I do not accept.

Mr Jackson: No, your government, not you personally.

Mr Keyes: Well, I am a member of the government.

Mr Jackson: I will correct the record. Not you personally; you probably did not even know what was going on. It is your government that welshed on it.

Mr Keyes: I am quite aware of what is going on. I am quite aware that the government is acting responsibly on behalf of all boards in this province. The whole purpose of this legislation is drawn from equity and financing of education, something we have not seen and we are working to improve. We still have a long way to go, even after this legislation, but it is a major step forward.

I also categorically reject that the ministry has accepted the amendment that has been put before us as being acceptable to it. I am not privy to the conversation that took place between the minister and Mr Jackson, but I certainly know the conversations that have taken place between the minister and myself in the last several days, but particularly on three occasions on this day. This is not acceptable. Again, I simply reiterate that

the very verifiable and very accurate calculations will be made available to boards that so desire by the ministry following the return of the rolls.

1630

The Chair: I presume we have another amendment but that is to section 43, so I would like to look at those sections that come between. May I consider, then, that sections 31 through 42, inclusive, be carried?

Mr Jackson: I request a 20-minute recess so I can contact the minister before I do the vote.

The Chair: I cannot grant that, Mr Jackson.

Mr Jackson: Why is that?

The Chair: Because there is only one condition under which we have a 20-minute recess and that is before a vote is called and at the moment there is nothing to be voted upon.

Mr Jackson: When you are ready to call a vote, would you please recognize me?

The Chair: I will. We are now asking if there is any discussion on any of those sections that I have just named, those sections that go between section 30 and section 42.

Mr Keyes: I thought there was one more that Mr Jackson wants, though.

The Chair: Okay. There is now a desire for a vote.

Mr Jackson: I would like to request a recess so that I can examine the implications of the recent vote in terms of the balance of my amendments with respect to this bill.

The Chair: That is fine. It is now 4:32, so we will come back at eight minutes to five.

The committee recessed at 1632.

1657

The Chair: I would like to ask the question I placed before. May I consider sections 30 to 42 carried?

Sections 30 to 42, inclusive, agreed to.

Section 43:

The Chair: Mr Jackson moves that subsection 161(22b) to the Municipal Act, as set out in section 43 of the bill, be amended by inserting “and (22c)” after “(22a)” in the first line thereof.

Mr Keyes: I wonder if we can get unanimous consent to look at all of these amendments to section 43 as one. I do not mind voting on them individually, but I see them as a collective. I would ask Mr Jackson to correct me, but it is making a provision in the various acts that would have to be amended, namely, a number of regional municipality acts and two places in the Municipal Act which are necessary in order that

clerks of municipalities would notify boards of education of their share of the utilities moneys that would be coming to them. They all follow the same pattern. Is it permissible to look at them in that light? It is a way I would like to discuss them, in general terms.

The Chair: Certainly, if Mr Jackson is willing to comment on them. Because they each deal with an addition to a section of the act that is different, I think we have to take all that goes with section 43. I am willing to open that for discussion, but we will have to vote on each of them separately. If you would like to try and help the committee, I understand I have two that have to do with this particular part, subsection 161(22c), and then one that is a little further down regarding subsection 368j(3b).

Mr Jackson: I am comfortable to have individual votes and we will just proceed as quickly as possible.

The Chair: I understand from the clerk that we are dealing with this out of order. You are talking about subsection 161(22c), which is not there. You have before us also subsection 161(22b). Mr Keyes is asking you to try to relate these or speak to them in a more general way to see in what direction you intend to proceed.

Mr Jackson: I am amenable to any way of dealing with the three, which have to do with telephone and telegraph receipts and a reporting mechanism. That is understood by committee members who are out to speed up the bill. I would be willing to deal with the individual votes but limit the comments.

Mr Keyes: As a clarification, I believe all six amendments are related to the same topic, three that deal with the Municipal Act and three that deal with specific regional municipalities. They all deal with the same issue of telephone and telegraph. I was asking that we might deal with all six together, or if you want, do three and three.

The Chair: The mover has the right to say how he wants these dealt with. He would like to take the vote. We have before us then the motion adding subsection 161(22c). I do not think that is the one you read.

1700

Mr Jackson: It is out of sequence. Would you like me to withdraw and then reread.

The Chair: I would ask that you do that.

Mr Jackson: I wish to withdraw the motion I have just moved in favour of a motion on section 43.

The Chair: Mr Jackson moves that section 161 of the Municipal Act, as set out in section 43 of the bill, be amended by adding thereto the following subsection:

“(22c) The clerk of the municipality in 1990 shall inform in writing the treasurer of each school board having jurisdiction in the municipality of the amount of the tax levied under subsections (12) and (13) that is allocated to a separate school board under subsection (22a).”

The Chair: As you can see, Mr Jackson has removed that which follows out of that motion, an amendment that was preceding this which we defeated. He has taken out all references to changes that would have resulted from that particular amendment to section—the addition of section 11.

Mr Jackson: There is not a parallel there.

The Chair: There must be some reason and I have to presume that is the reason you took those references out.

Mr Jackson: The government's intransigence is very clear. There is no sense haranguing the point.

The Chair: All right then, if there is no further comment, will we take the vote on this amendment? Is there any other discussion or comment?

Mr Keyes: Let me put forward the point of view that it is not intransigence to be amenable to amendments, but I find all three we are dealing with now, but the subsequent three as well, to be redundant types of amendments from the point of view that we are placing an onus on the clerks of municipalities to notify both public and separate boards as to the amount of telephone and telegraph revenue they will be receiving. That will come to the boards automatically.

As we know historically at the moment, it has all been shared with municipalities and the public board. The municipality will now have to take a share of that portion that previously went to the public board, and when that share has been determined by the clerk the separate board will be so notified and receive a certain sum of money.

It will be very simple for that board, from what it receives, since it will be expressed to them as a percentage of the total that goes to boards, to calculate what the entire amount would have been that either went to both public and separate boards or that went to either one; likewise for public boards. It is really a redundant type of amendment to the act. I do not see the particular validity of the exercise, that it adds anything to what will already be done and what will be available to them.

Mr Jackson: I am again distressed to hear what I am hearing. This is another point on which I thought we were getting a clear indication of the government's willingness to look at this amendment.

In the previous 20-minute recess, I needed time to analyse the implications of the removal of the one amendment, but also to find out where the Minister of Education was. I have located him. He is only 20 feet above us in the House, doing House duty on the insurance bill. As you can see, his sign is sitting there empty, as is his chair.

I would request another 20-minute recess so I can continue my discussions which I just barely began with him in the House. He has so chosen to be in the House rather than be before us with that bill, but I for one can probably complete all my necessary discussions with him in the next 20 minutes in the House, which is where he is sitting. I did ask him to come down. I would request a 20-minute recess so I can finish my discussions with the minister.

The Chair: Mr Jackson, We have had six days on this and you had six days, as I understand it, to discuss with Mr Conway. You know the time lines under which we are working in this committee.

Mr Jackson: Yes, I am quite familiar with those and I am rather shocked at now finding out for the first time, at this late date, after having had discussions with various people in the ministry. I know I have the right to request the time. I have requested the time and I have at least afforded you a full explanation as to why I have requested that time.

The Chair: I understand that we will have to have unanimous consent at this moment to do this. I am going to ask, but Mr Grandmaitre would like to make an intervention.

Mr Grandmaitre: I would like to ask Mr Jackson a question. Has he consulted the affected municipalities?

Mr Jackson: No, I have not. I could probably do that in 20 minutes as well.

The Chair: We have an amendment before us. I think this is very hard to explain to people who know the kind of commitment we have made to many groups on this committee, but you have a right to ask for a 20-minute recess if I ask for a vote on this amendment, which if there is no further discussion you may do.

Mr Keyes: I just want to raise the issue once again. It is my opinion that while we are dealing with three amendments here at the moment, I see

it very frankly as just a delaying tactic to get us through the day. We had hoped, but I see it will probably be impossible today, to begin our briefing on another very serious piece of legislation, namely, that of teacher pensions.

If we take a 20-minute delay now—I understand Mr Jackson is not even asking for a 20-minute delay as is his right if we call a vote on these three, but he is asking for 20 minutes for discussion with the minister, and the only way to arrive at that is through a motion on these three—I would ask that we get unanimous consent to deal with all six at one time, fully expecting Mr Jackson to use his right and ask for a 20-minute recess.

But if he is going to do it on each of these three, and then three again, and make up 40 minutes which is basically the balance of the day, I can only suggest that I have only one alternative left. I might as well say, not in the way of trying to get Mr Jackson to come across to that, that with the length of time we have spent on this bill it would appear that short of interrupting the consideration of other equally important bills we may have to move this back to the House where it could be dealt with in committee of the whole.

Mr Allen: I do not think it is quite fair to presume that because Mr Jackson—and indeed myself—is confronted with a very technical bill in many respects and wishes to have a further 20 minutes to complete a discussion that he had not begun with the minister, which in his estimation can be completed satisfactorily for the purposes intended, he should in a sense be viewed as somehow going to do this to us every time another motion comes before this committee.

I do not think that is fair at all. I would support his request that the committee graciously permit him the opportunity to come back to us in 20 minutes with whatever further information he may have as a result of that exploration and then for us to proceed with our vote.

The Chair: You have the ear and time of the minister—

Mr Jackson: I have his assurance he will still be in the House.

The Chair: Because as I read these rules of order, and I do want to be fair, the request for 20 minutes is when there is a division taken and it is basically for bringing members together for a vote. It is not for this purpose, so I think you have to have the consent of the committee to do this. Now, you do seem to have Mr Allen's consent. Do you have the rest of the committee's consent? This is an extraordinary request.

Mr Keyes: Do we get the consent on a reciprocal level of dealing with all six in one vote?

Mr Jackson: I have no difficulty.

Mr Keyes: If you want to legalize it, we could call a vote on Bill 64 and it provides the same thing. Otherwise, if we are going to deal with all six of them in one vote following his 20-minute recess, I will look upon that as the same 20 minutes that he would have received under the three amendments he has placed before us.

The Chair: Are we in agreement then for a 20-minute recess until 5:30 pm? Is that agreed? I do not hear anybody speaking.

Mr Keyes: On the understanding that when we return we will be voting on the six amendments before us on sections 43 through 46.

The Chair: Mr Jackson and Mr Allen, are you in agreement?

Mr Allen: Agreed.

Mr Jackson: Agreed.

The Chair: All right. We will recess until 5:30.

The committee recessed at 1710.

1730

The Chair: We will resume the debate regarding section 43 of Bill 64. Who would like to speak, or are we going to have the vote immediately?

Mr Jackson: We were unable to get our other voter here. Mrs Cunningham is in the middle of her speech on auto insurance, so she cannot come.

The Chair: She did mention that to me.

Mr Jackson: The Minister of Education (Mr Conway) declined the offer to come and assist us through the balance of these hearings for the next half hour, although I have satisfied myself with the nature of the government's commitment to these amendments.

The Chair: You would like to have them voted upon as presented?

Mr Jackson: Please.

The Chair: The motion that we have regarding section 43, subsection 161(22c)—

Mr Jackson: These are recorded votes.

The Chair: Recorded votes. Those who are for this amendment as presented, although it is not as you have it in writing. There were some parts of it struck, as Mr Jackson read it. Are you voting for the motion, Mr Jackson?

Mr Jackson: Yes.

The committee divided on Mr Jackson's motion, which was negated on the following vote:

Ayes

Allen, Jackson.

Nays

Elliot, Fawcett, Grandmaitre, Keyes, Roberts.

Ayes 2; nays 5.

The Chair: The next is very closely connected. I presume then you—

Mr Jackson: It is not required, since the previous motion was defeated.

The Chair: Mr Jackson moves that section 368j of the Municipal Act, as set out in section 43 of the bill, be amended by adding thereto the following subsection:

“(3b) The clerk of the lower tier municipality, city, separated town or separated township in a county in 1990 shall inform in writing the treasurer of each school board having jurisdiction in the lower tier municipality, city, separated town or separated township of the amount of the tax levied under subsections 161(12) and (13) that is paid to a separate school board under subsection (3a).”

Any comment, discussion, questions on this particular amendment?

Mr Keyes: Same vote.

The Chair: It was a recorded vote, so everybody is agreed it is the same vote.

The committee divided on Mr Jackson's amendment to section 368j, which was negated on the same vote.

Section 43 agreed to.

Section 44:

The Chair: Mr Jackson moves that section 81 of the Regional Municipality of Haldimand-Norfolk Act, as set out in section 44 of the bill, be amended by adding thereto the following subsection:

“(2b) The clerk of the area municipality in 1990 shall inform in writing the treasurer of each school board having jurisdiction in the area municipality of the amount of the tax levied under subsections 161(12) and (13) of the Municipal Act that is paid under subsection (2a) to a separate school board.”

Any comments or questions?

Mr Jackson: The same request.

Mr Keyes: Same vote.

Mr Jackson: No, this last vote was unanimous, so I would agree with you, Mr Keyes.

The Chair: We are asking for a recorded vote on the amendment to section 44.

The committee divided on Mr Jackson's motion, which was negatived on the following vote:

Ayes

Allen, Jackson.

Nays

Elliot, Fawcett, Grandmaitre, Keyes, Roberts.

Ayes 2; nays 5.

Section 44 agreed to.

Section 45:

The Chair: Mr Jackson moves that section 73 of the Regional Municipality of Sudbury Act, as set out in section 45 of the bill, be amended by adding thereto the following subsection:

"(2b) The clerk of the area municipality in 1990 shall inform in writing the treasurer of each school board having jurisdiction in the area municipality of the amount of the tax levied under subsections 161(12) and (13) of the Municipal Act that is paid under subsection (2a) to the Sudbury District Roman Catholic Separate School Board."

Is that the same vote? Do we have to record it?

Mr Jackson: I think we have to record, yes, just quickly.

Mr Keyes: Same recorded vote as the previous one.

Section 45 agreed to.

Section 46:

The Chair: Mr Jackson moves that section 120 of the Regional Municipality of Waterloo Act, as set out in section 46 of the bill, be amended by adding thereto the following subsection:

"(2b) The clerk of the area municipality in 1990 shall inform in writing the treasurer of each school board having jurisdiction in the area municipality of the amount of the tax levied under subsections 161(12) and (13) of the Municipal Act that is paid under subsection (2a) to the Waterloo Region Roman Catholic Separate School Board."

Mr Grandmaitre: Madam Chair, has the regional municipality of Waterloo agreed to this?

Mr Jackson: It is my understanding that when the Ministry of Revenue indicated that it could

support these amendments, it did that without checking with the regions involved.

The Chair: May I presume the same recorded vote on this particular amendment?

Mr Keyes: Same recorded vote as previously.

Section 46 agreed to.

Sections 47 and 48 agreed to.

The Chair: Okay, section 1a is the other amendment I have. This is something that has not been referred to us, but I understand from the clerk that we do not need unanimous consent because it is directly related.

Mr Jackson: It is a modification of the amendment that I tabled on Tuesday last, having had it vetted by legal counsel and the Ministry of Education. I will have it read into the record, if I may.

The Chair: Mr Jackson moves that the bill be amended by adding thereto the following section:

"1a. Section 10 of the said act is amended by adding thereto the following subsection:

"(3a) The Lieutenant Governor in Council may make regulations with respect to general legislative grants to add the following grant category: equalized assessment transfer compensatory grants—public boards."

Mr Jackson: I wish to divide at that point with what members have in front of them.

The Chair: Mr Jackson, I am going to have to make a ruling on this amendment and I am going to rule that it is out of order because it does direct the Lieutenant Governor of the province. As I understand from the rules of order that I have read, only ministers of the crown may do that in the executive council. A piece of legislation cannot do that and this committee cannot do that, so I am making that ruling.

Mr Jackson: I just wanted to bring to your attention that I indicated that the Lieutenant Governor "may" make regulations, so it is in fact in order. I checked that out with legal counsel. I did not—

The Chair: So you are changing your "shall" to "may."

Mr Jackson: That is the way I read it into the record, Madam Chair.

The Chair: I guess I missed that finer point. Would anyone like to make any comments about this particular amendment?

Mr Keyes: Thank you, Madam Chair, for the correction that has been there, but because it is on the same sheet of paper I cannot help but look at subsection 3b which follows subsection 3a. In

my personal opinion only, 3b is definitely out of order since it would direct again sums of money—
1740

The Chair: We are just speaking to subsection 3a. I think that is what we should do at this present time. I will withdraw my ruling with the change.

Mr Keyes: I would oppose the regulation set out because it sets up a particular new category in the system of general legislative grants with, in essence, no further direction to it as to why it should be set up.

The Chair: All right. Any further comments or discussion on this particular item?

Mr Jackson: I am rather disappointed that Mr Keyes would not have waited to hear the rationale, but I will attempt to convey—

Mr Keyes: I have been waiting.

Mr Jackson: Good. The most important element of education financing at the moment is the element of trust and accountability. Clearly, all legislators have been struggling with that issue in the context of declining funding for education generally and public education specifically. In the course of the last few months, several people have put their minds around this issue of accountability.

What we have in front of us is a simple recommendation that the Lieutenant Governor, on the basis of direction from the minister, would set about having regulations to pay for something he has promised, which the legislation so far is somewhat silent on, but all the public declarations have been made with respect to some form of compensatory grants.

We have established several things in the course of these hearings. We have established that these will not be measured and analysed in each of the six years of phase-in. We are now advised that this is a one-time calculation which will be amortized or phased in over the course of the six years. It becomes very critical then that school boards know exactly the degree to which they are being compensated. For those of us who have experience with Bill 30 generally, that is required to avoid much of the acrimony that could establish itself over this delicate issue.

In order for the government's promises—I know that sometimes they call them assurances and sometimes they refer to them as promises. I see them more as assurances today, but we have gone this far with this legislation, so let's hope that they are going to be promises. Then they have to be measured and allocated in a way in which school boards can understand how they are

being transferred. I feel very strongly about having a designated fund from which school boards are paid.

We know that there is a growing trend in education to lump all costs into one transfer payment. People have reacted to that. The government has indicated it is more efficient to have one fund. They might even argue that one or two civil servants are required, in a ministry that has quite a few, in order to analyse and prepare the necessary cheques to send out individually.

I rather see that the whole issue of accountability is something that should not be suffered on one of the partners of education. If we have a joint partnership in public education for the two funded systems in this province, then all parties should be accountable, parents and taxpayers in terms of what they honestly pay, the boards in terms of what they spend and how they spend it and the government in terms of what it mandates and what it essentially imposes or decides about the way education will be structured in this province. That is essentially what we are doing today.

We have the only opportunity as provincial legislators to determine if the fund will be designated and therefore have the elements of accountability. There are many at this table who have participated for the last two years on the select committee on education. Our most recent report is dealing with this whole issue of accountability. We make some very strong, clear and cogent recommendations in this entire area.

It is my opinion, and I do not think it will be contradicted, that this is the first opportunity we at the provincial level of government have had to provide those assurances to school boards that we too want to have the same degree of accountability. We are not frightened of that accountability; we are prepared to deal with it in an upfront way and we are prepared to be held accountable. That is not just a problem for a political party provincially; it is a problem for all people in public life.

So there is more in this motion, in my view, than simply suggesting that it may not be appropriate, which are the words I have heard from the government, for what it might lead to. This may be the only simple motion that I make. I am trying to be consistent, which is a commodity we sometimes strive for here in provincial and in any political life. I am trying to say that when I sat and voted on the select committee on education and dealt with the issues of accountability, I know what I was supporting and that,

were I the Minister of Education, I too would be consistent.

Obviously this amendment is not binding on the government. It has the escape clause; it "may" make regulations. It is a simple option for the government to use, but it would allow the government to act in a consistent and responsible fashion in the way in which it is calling upon school boards in this province to ask under restricted budgets, under increased financial pressures.

Mr Grandmaitre: I have a very short question. I realize what Mr Jackson is trying to do and I respect him for it. But I agree with him. There is more to this motion than meets the eye. I would like to ask him, if the equalized assessment transfer were made, how would the municipal resource equalization grant be affected?

Mr Jackson: I am fascinated that you as a former Minister of Revenue have the question in the first instance. Basically, we have the assurances of this government that there will be a transfer payment. The intention here is that this not be lumped into a general legislative grant and hidden.

My whole point was not on the implications to certain transfer payments that exist with other ministries perhaps, but on the relationship between school boards which in the last year have seen the ministry indicate that it would like to dismantle the distinction between grants for elementary and secondary purposes. Special education grants, since Bill 81, the beginning of this decade, have been clearly designed so that boards could be accountable for the money they spend for special education purposes. That is now blended into the GLGs.

That is the purpose of this recommendation. To my knowledge, if you are now introducing the concept that somehow school boards are going to put other grants in jeopardy as a result of receiving any kind of transfer payment, first of all, I would be shocked that we are finding out about it with 10 minutes left to completing the bill, and it underscores again the need to have had somebody from the Ministry of Revenue present at some point during these long hearings on such a critical bill so that the former minister's questions could be asked to his former staff. I am just quite shocked at the question.

Mr Grandmaitre: I am simply asking a reasonable question; I think it is very reasonable. I know that under the Municipal Act and also the revenue act we are faced with five grants, and I am asking Mr Jackson: How will this amendment

affect those five grants? It is a reasonable question.

1750

The Chair: I think Mr Jackson has given his answer, unless he has something to add.

Mr Jackson: I can respond further. This amendment was presented to the Ministry of Revenue people. They had an opportunity to state their objection to it and they have not objected to it, nor have they shared with me any catch-22s that are implicit in the nature of your question, although it was a genuine question with respect to whether or not there are some problems.

As I stated earlier, we have attempted in the course of the last six days to get these amendments to Revenue people so that they could comment. They were to let me know if there were serious objections. If there were problems, I was not prepared to table them. That is partly why I have reacted the way I have to the government in stating no, all of a sudden, because up until four o'clock today I was told there were no problems with these amendments. Unless Revenue people were not indicating things directly to us, my understanding was that they had no difficulty with the amendment from the point of view of its implications or they would have communicated that to me.

Mr Allen: Could I ask the ministry officials or Mr Keyes under what head the proposed transfers will be transferred to the appropriate bodies? If you are not creating a specific grant, is it going to be folded in? Is it going to have a clear and visible status or is it not?

The Chair: What are your plans, Mr Lenglet, for the accounting?

Mr Lenglet: There will be a clear identification of the boards entitled to the payment and the amount of the payment. Backup material related to that calculation will be provided independently. The amounts themselves will appear right within the general legislative grant regulation.

Mr Allen: So, Madam Chair, is there any good reason why this, at this point in time, should not be given a name within the bill? That, essentially, is what Mr Jackson is asking for.

The Chair: Did you want to say something more, Mr Keyes?

Mr Keyes: No. I think Mr Lenglet answered it. It will be very specifically spelled out, plus the method of calculation used to arrive at the amount.

The Chair: There is a request for a recorded vote on the amendment to section 1a.

Mr Jackson: Could I pursue that question? Mr Allen asked about the method of payment. I am asking what you are going to name it. Have you got a name for it? You have the regulations completed, as I understand it.

Mr Lenglet: We are talking about the GLG regulation here, which is issued in March. Within that GLG regulation, there will be the identification of those boards entitled to a special grant in relation to the change in the designation rules related to assessment, and beside the names of those boards so entitled there will be an amount of money identified as payable to those boards as part of their GLG calculation.

The method of calculation of that, indicated in the May 1989 printout, will be provided independently in support of that calculation.

Mr Jackson: You said that the GLG grants are not ready. I asked you if the regulations for this bill have been drafted. One of the calculation points was 1 December, which we have now passed.

Mr Lenglet: The regulations—

Mr Jackson: Are you telling me that the regulations have not even been begun in this?

The Chair: Mr Jackson, please let Mr Lenglet answer.

Mr Lenglet: The regulations related to this bill do not relate to money. They identify by municipality the split on assessment in each municipality in the province, based on the amount of public and separate assessment for public corporations.

Mr Jackson: So there is nothing in the regulations that deals with compensation.

Mr Lenglet: There is nothing in the regulations that accompany this act, as I understand them, that deals with money. We are not in a position at this point to calculate sums of money.

Mr Jackson: Now I am really confused. I do not have Hansard in front of me, but when we dealt with the questions on compensation, we were assured they were in the regs. I am now told that the regs are silent in terms of compensation.

The Chair: I do not remember that discussion.

Mr Jackson: I do. It was on the issue of guaranteeing the payment. They said, "That will be covered in the regs; you don't need to put it in the language of the bill."

The Chair: I think we would definitely have to check Hansard if you are going to push the item, but I certainly will accept your word for the moment.

Mr Allen: I, too, am rather confused by the response because it says, as I heard it, that there not only is nothing because there are no regulations drafted at the moment, but that there is no intention to include in the regulations anything that pertains to the payments.

The Chair: Mr Lenglet, if you will help, do you remember what you said? I am certainly not able to do that.

Mr Lenglet: It is my understanding that if I made a statement about the compensation payments being in the grants, they would be in the place we had authority to make those, which was in the GLG regulations.

Mr Riley: For which there is already existing authority. There is no need to amend that in order to confer the authority necessary to make any of these grants that will be part of this package.

The regulations being made under the heads of authority contained in this legislation are not related to that. They are, as Mr Lenglet said, dealing with the changes and the splits in the assessment ratios between public and separate systems by a municipality, and those are in the course of being prepared now.

Does that clarify it for you?

Mr Allen: Yes. But I thought the point was that it was impossible to include something in the regulation in respect to something for which you cannot at this point in time make the calculations. I am not sure exactly what you meant by that. Did you mean that you just do not think you will have the figures, as distinct from the categories, to make the calculations?

Mr Lenglet: In terms of the figures that will appear in the GLG regulations, we will make those calculations only after we have received the information from the Ministry of Revenue related to the amount of assessment that exists in each municipality under the provisions of Bill 64 and Bill 65. To make that calculation, we also have to do the rest of the determination of the grant ceilings for 1990, the equalized mill rate, elementary and secondary; the entire series of calculations that go into the GLG would have to be done and, as a part of that, we will include increases to the grant ceilings, as promised in the statement of 18 May, that would have the effect of increasing operating grants so that the public school system, on a province-wide basis, will not suffer a net loss of revenue.

All those calculations will have to occur before we have finalized numbers on what is the net impact on what was estimated as 13 boards which have still suffered a loss of revenue. Having done

the GLG, we can then calculate whether those 13, in fact, exist and what the exact amount of that loss is.

Mr Allen: My question was not whether you could do it or not, or under what particular head, but the problem appears to be whether there is some connection between your capacity to do it and the legitimacy of regulations. I was not sure, therefore, what the answer was, whether it was an answer regarding the technicality of calculations or a response in regard to the legitimacy of having a regulation and where that regulation should be, whether it is appropriate to have the regulation with respect to this amendment or this legislation or whether the implication was that it needed to be someplace else, or what the connection was with the actual calculation.

Because if you can do the calculations and there is already an appropriate regulation, then we do not need the regulation; we just need to call it something in the context of this bill so that it is identifiable and has an identifiable relationship with the pooling purpose, which is lodged in this set of amendments.

Mr Lenglet: We have an authority to make the payment under the GLG.

Mr Jackson: Can I have that section?

Mr Riley: Yes, it is clause 10(3)(a) of the Education Act. It reads, "Subject to the approval of the Lieutenant Governor in Council, the minister may make regulations," governing "(a) ...the apportionment and distribution of moneys appropriated or raised by the Legislature for educational purposes."

Mr Jackson: What is the word before "raised"?

Mr Riley: "Or raised."

Mr Jackson: I am sorry?

Mr Riley: "Appropriated or raised." I will read it again.

Mr Jackson: No.

1800

Mr Jackson: No.

The Chair: We should be adjourning this meeting at the present moment if we are abiding by our rules. I presume you want to go on for at least a short time. I want to get agreement on that time—6:15, 6:30 or until we finish this bill, whatever you suggest. I think time would likely give us all a better parameter.

What are we agreeable to?

Mr Keyes: I request we extend it so that we deal not only with Bill 64 but with Bill 65 as well,

which has comparable amendments complementary to those that were passed.

The Chair: What is your projection on that kind of a time frame?

Mr Keyes: It would be no longer than 6:30 in my opinion, but that would be subject to opposition. Our amendments are straightforward and have been there. I have made some slight comparison between Progressive Conservative amendments, which seem to be reasonably in line with the ones we have proposed. That is why I would like to see it go to 6:30.

The Chair: There seems to be some agreement to meet until 6:30.

Mr Jackson, what are you about to propose at this moment? We will have to get some agreement on continuing this meeting.

Mr Jackson: I do not foresee us taking a great deal of time, probably another half hour, but I am not wild about doing it tonight. It is our fault we started late today. It was not the deputants' fault or anybody else's.

The Chair: That is true. If we meet for one more half hour we will have made up that half hour. We have invited people to appear tomorrow. I would not want to totally wipe out tomorrow. The teachers' federations have requested time and we have granted it. We have to go with tomorrow pretty much as it is, although I know it is likely we are going to have to back up on a couple of those presentations because we have to have the ministry presentation.

Mr Jackson: We are scheduled to finish at six tomorrow night?

The Chair: At the present time we are scheduled to finish at six. I have asked the ministry people what is the very minimum time in which they can give us their briefing and it is between 45 minutes and an hour, depending on where the Ministry of Labour fits into that.

I am suggesting we start at 3:15 tomorrow. That would mean I would ask the Ontario Teachers' Federation to begin somewhere between 4:15 and 4:30.

Mr Jackson: What would be the difficulties with us extending tomorrow night for as long as it takes and finishing this bill? I have difficulty staying late tonight.

The Chair: The bill is to be reported. We have been asked by all House leaders when we are going to report this bill. It has a very tight time line.

Mr Jackson: I am suggesting that could be tomorrow night.

The Chair: Tomorrow night brings us into another legislative schedule, Wednesday, because tomorrow night is Tuesday and today is Monday. You are really asking for two days rather than one.

Mr Elliot: Mr Jackson, are you requesting we stand this bill down until the end of the day tomorrow so that we can honour the commitments we have made?

Mr Keyes: And Bill 65.

Mr Elliot: And Bill 65.

The Chair: There is no permission to meet tomorrow night. We would have to get unanimous consent right now to do that.

Mr Jackson: That is what I was suggesting as a better option.

Mr Elliot: I am speaking in support of this idea, if that is the intent of it, tomorrow night.

The Chair: To work tomorrow night for how long?

Mr Jackson: Until it is done.

The Chair: I personally will find that very difficult but I may be able to change my plans.

Mr Elliot: We should get at this and get on with Bill 66 unless the deputy chair cannot be here tomorrow night.

Mrs Fawcett: I can be here tomorrow night.

The Chair: Have you agreed to continue this meeting or not? We are in the middle of a discussion on an amendment. I do not know whether we are going to continue to 6:30. I think we could complete this bill by 6:30 if we really wanted to. We have one amendment and you have asked for a vote. I do not know why we cannot do that right this minute or why we are talking about tomorrow night. If we agree to stay even for 15 minutes, there are only two amendments to Bill 65, one from each side.

It is pointless to talk about tomorrow night and have absolutely no time lines. We have staff involved, we have presenters involved and people who are interested in these two bills. I think it is really unfair. We do have to break for dinner, so you are talking of asking people to come for an extra three or four hours tomorrow night when we could do it in 20 minutes right now.

Mr Jackson: Three or four hours?

The Chair: I am saying that because you have to have supper. The way you are talking, it seems you want to take a couple of hours. Why can we not do this right now in 20 minutes?

Mr Jackson: In the event that it does, I guess, but I do not think it should.

The Chair: Okay, let's try.

Mr Jackson: We need a motion, to be honest. We need a motion to extend past the hour of six. I have not heard one as yet.

The Chair: Right, and I am waiting for that. We did have one that Mr Keyes made, that we meet until 6:30, but I do not think it was heard. We need unanimous consent to sit until 6:30. Is there unanimous consent? We are one half a clause and one vote away from completing this bill.

Agreed to.

Mr Jackson: I may have to leave early, but we will proceed now.

The Chair: Okay. We are ready. You have asked for the vote on section 1a.

Mr Jackson: I have a further question I wanted to ask legal counsel to the ministry. As you read the motion, there is nothing in that which is out of whack with amending the GLG regulations. Is it not correct that is the appropriate way in which to word the creation of a new fund?

Mr Riley: I do have some problems with the concept of creating a category. It seems to me to amount, on its face, to nothing more than a labelling process here. I do not see it as a provision that will grant authority where none formerly existed and thereby will not tend towards accountability in any real sense. On the other hand, I see no problem with establishing a category if that means simply entitling a certain part of the regulation in a certain way. That is really a matter which hardly needs a separate head of authority or amendment.

Mr Jackson: Are there not currently grant categories under the GLG?

Mr Riley: Yes, but there are not separate heads of regulatory power establishing their names. I do not think there is any necessity to establish it in this way because the authority is already there. There are actually, I should mention also, other heads of authority within subsection 10(3) of the Education Act. I refer to subclause 10(3)(c)(i). It reads, "Subject to the approval of the Lieutenant Governor in Council, the minister may make regulations for the purposes of legislative grants defining any word or expression," for instance, and subclause 10(3)(c)(iv) says, "respecting the application of any part of such grants" and subclause 10(3)(c)(iii) reads, "prescribing the portions of any expenditure to which such grants apply."

I just do not see, frankly, the necessity of this provision. On the other hand, I do not see any

particular fault with it other than, I suppose, that this reads "The Lieutenant Governor in Council may" and I suppose it might be appropriate to make it in the same fashion as subsection 10(3), which is, "Subject to the approval of the Lieutenant Governor in Council, the minister may," since that is the way that authority is already framed. Those are the only comments I would have.

The Chair: Are we ready to take a vote on this amendment? I have had a request for a recorded vote.

The committee divided on Mr Jackson's motion, which was negated on the following vote:

Ayes

Allen, Jackson.

Nays

Fawcett, Grandmaitre, Keyes, Roberts.

Ayes 2; nays 4.

Title agreed to.

Bill, as amended, ordered to be reported.

The Chair: Could we begin Bill 65 with the two amendments? We have two amendments that are going to be handed out immediately.

1810

Mr Keyes: In fairness, I think there are a number of amendments which parallel those that have already been made. I believe the number of amendments from the government total approximately eight. When you said two, I believe—

The Chair: Are you talking about Bill 65?

Mr Keyes: Yes. I am wondering if you were referring to amendments handed out by the Progressive Conservatives, which were two in number. I am not sure.

Section/article 1:

The Chair: Mr Keyes moves that section 1 of the bill be renumbered as section 1a and the following section be added to the bill:

"1. Subsection 5(2) of the Ottawa-Carleton French Language School Board Act, 1988, being chapter 47, is amended by,

"(a) striking out 'an urban' in the fourth line and inserting in lieu thereof 'one'; and

"(b) striking out 'urban' in the sixth line."

Mr Keyes: Just as a clarification, this simply is a boundary one which takes—

Mr Jackson: This is the first one here?

Mr Keyes: Yes. I think there was a package handed out, perhaps today, perhaps previously.

The Chair: It is being handed out, I think, at the moment, is it not, or am I dealing with something different? There is a section 1 amendment to Bill 65, but I do not think it is directly related, is it, Mr Jackson? Okay, are we ready to take the vote on this?

Mr Jackson: I am not ready. Could I have a moment, please? Could I raise an issue, please? This is a bilingual bill, is that not correct?

The Chair: That is correct.

Mr Jackson: It has been printed in both official languages and it is parallel-paged in its presentation before us. I would like to inform the committee that it was indicated when I undertook to prepare my amendments to this bill that they should be done in both official languages, and I came today prepared with that. It was not easy. Could I ask if the same standard applies to the government that was suggested should apply to the members of at least one opposition party?

Mr Keyes: I agree that the regulations binding on both should be the same. I am not aware that was given to you. I am very much aware that it is printed in both languages. I do not have amendments printed by either party, the government or the Progressive Conservatives, in two languages.

Mr Jackson: Ours are being handed out now in French.

The Chair: I have not received anything in the French language from anybody to this moment.

Mr Keyes: I understood they were available last week.

Mr Riley: Yes.

The Chair: Okay, they are here. The instruction that was given to me as chair of this was that anything that is passed in English will be deemed to be passed in French, and legislative counsel will insert any amendments with the appropriate language into the French language as we pass these amendments in English. Those are the instructions I was given as chair. I did not know any regulations had been set up regarding how the amendments would be presented. But now we all have them in both languages, so can we look at section 1, which we have just had presented?

Mr Jackson: I would like to request that you will undertake to examine what the specific rulings are with respect to any amendments which are prepared. I would like you to specifically examine—and I will talk to you later about it—communications to us that they should be prepared in French. There are obviously legal

implications to specific legal language in a bill in English and translating that into French.

The Chair: All I know is that legislative counsel were instructed that they were to undertake that, and that is the instruction I have had, that they will insert any amendments and have them translated and inserted accurately.

Mr Jackson: Let me ask another question then. I just want to understand the process. Are we approving the French version as part of the committee activities or are we just approving the English version?

The Chair: We can certainly take another vote. I understood from the clerk that it was deemed to be passed in French if it was passed in English. If you would like to pass the French version, we will not have the translation as we do it, especially if, as sometimes happens, amendments are changed as we progress. We must all try to be as co-operative as possible with this. It is sensitive; it is an act affecting the francophones in Ottawa-Carleton.

Mr Jackson: I am having difficulty. What are the rules with respect to the way in which this is handled, given the suggestion that the amendments must be translated in French to determine their implications with the—

The Chair: Mr Decker, do you have any knowledge of these kinds of rules?

Mr Jackson: That is all I wanted to establish, if these bills were to be voted on in that fashion. If there is going to be a requirement to have amendments in French, then I wonder if that is tied to us approving it in French. I was trying to get a better understanding.

The Chair: I do not think we did it in Bill 109, but that is my only experience. Mr Decker, do you have a ruling that things could have changed since we did Bill 109?

Clerk of the Committee: The bill is officially bilingual and it will be amended bilingually. There is no requirement for the committee to consider amendments in both languages at the same time. If they are proposed in French, legislative counsel will take the necessary steps to ensure that the English-language equivalent of that amendment ends up in the bill, and vice versa.

Mr Jackson: I am not bilingual. Does that mean that if an amendment was tabled in the French language, we would be called upon to vote whether or not I understood what it was we were voting on, without benefit of the translation?

The Chair: We need a ruling on it. It may not be possible to get it today. Is it a rule of the committees now, in this Legislature, to have amendments to a bill that is printed in both languages presented in both languages from the beginning? We can refer that to the Speaker and see what the ruling is.

Mr Jackson: That is what I was asking for. I would like to understand it better. When I came across this implication from the ministry indicating that our amendments should be translated before they come to this table, I was concerned. You understand the nature of my concern and you will examine it and report that to us.

The Chair: Thank you for bringing that to our attention. An amendment has been read, section 1 of this bill.

Mr Jackson: Does the government want to speak to the amendment just so I can understand what—

Mr Keyes: I commented at the same time I moved it, but I appreciate that you were busy discussing. At the bottom of the page I printed the relevant section of the act to show what would be taken out.

It would then read, "If this act provides that a provision of the Education Act applies the French-language board and that provision is within the jurisdiction of the Roman Catholic sector, the region shall be deemed to be one separate school zone and the French-language instructional units of the Roman Catholic sector shall be deemed to be separate schools operated by a Roman Catholic school board." We are removing "an urban" and "urban" so that it will be consistent. That term is no longer relevant.

Motion agreed to.

Section/article 2:

The Chair: There is another amendment from the Progressive Conservatives, on section 2. I do not know which would take precedence. One has 18a(1) and one has 18a as set out in section 2. That is difficult for me to rule on; I do not know which comes first.

Mr Keyes: They are both on the same one; I believe they are both to 18a(1).

The Chair: That seems to be what it is.

Mr Keyes moves that the definition of "public corporation" in subsection 18a(1) of the act, as enacted by section 2 of the bill, be amended by,

"(a) striking out "a" in second line of clause (b) and inserting in lieu thereof "any"; and

"(b) striking out "an affiliate or" in the fourth line of clause (c) and inserting in lieu thereof "a."

1820

Mr Keyes: Again, the purpose of that is as it was in Bill 64, just to make it clear that if shares of the corporation are traded in a public market, it is anywhere in the world. This is the same thing we did before. There was some doubt that the use of the word "a" was correct. That is why we changed to "any."

Mr Jackson: Whose recommendation was this to the government during the hearings?

Mr Keyes: I will ask Mr Lenglet how it came about. I do not know whether we can find the particular individual who made that representation, but it was to broaden it, to leave no doubt in the minds of anyone that if these were traded on any exchange in the world, then it is appropriate, as opposed to just the reference to "a."

Mr Lenglet: That recommendation on anywhere in the world was made by the Completion Office Separate Schools.

The Chair: That is my recollection as well. Motion agreed to.

The Chair: I have another amendment to section 18, to subsection 18(10). I do not know when you want to bring yours forward, Mr Jackson, and where it fits in. Does this fit in at the end, where you are saying "adding"? I am asking for direction from you as to where you feel this would be best presented, so we can keep some kind of chronological order. You want to add that at the end of this particular subsection, 18(8), is that correct?

Mr Jackson: Yes.

The Chair: I think that would come next then because the next I have from Mr Keyes and the government is subsection 18(10), correct?

Mr Keyes: Yes.

Mr Jackson: I guess there is no way of facilitating having this deemed to be read into the record. I guess for Hansard purposes it has to be read in.

The Chair: It has to be read, according to our clerk.

Mr Jackson moves that section 18a of the act, as set out in section 2 of the bill, be amended by adding thereto the following subsections:

"(8) The assessment commissioner shall in each area municipality,

"(a) identify those assessments in respect of public corporations appearing on the assessment roll as returned for assessment in the year 1989 for taxation in the year 1990 that have assessment roll numbers that also appear on the assessment

roll as returned for assessment in the year 1988 for taxation in the year 1989; and

"(b) calculate the difference between

"(i) the total amount of assessments identified in clause (a) rated and assessed for the purposes of a school system other than the Ottawa Board of Education or the Carleton Board of Education on the assessment roll as returned for assessment in the year 1989 for taxation in the year 1990, and

"(ii) the total amount of assessments identified in clause (a) rated and assessed for the purpose of a school system other than the Ottawa Board of Education or the Carleton Board of Education on the assessment roll as returned for the assessment in the year 1988 for taxation in the year 1989.

"(9) The calculation of the difference under clause (8)(b) shall be carried out, with necessary modifications, up to and including 1995.

"(10) The assessment commissioner shall notify in writing the treasurer of the Ottawa Board of Education, the Carleton Board of Education, the Ottawa Roman Catholic Separate School Board, the Carleton Roman Catholic Separate School Board and the secretaries of the public sector and the Roman Catholic sector of the Ottawa-Carleton French-Language School Board of the difference calculated under clause (8)(b)."

Mr Jackson: I think everybody is familiar with the point I am trying to make.

The Chair: I think that is true.

Mr Jackson: Recorded vote.

The Chair: I kind of expected that.

The committee divided on Mr Jackson's amendment to section 18, which was negatived on the following vote:

Ayes

Allen, Jackson.

Nays

Fawcett, Keyes, Elliot, Grandmaître, Roberts.

Ayes 2; nays 5.

Section/article 1:

The Chair: We then have from the government an amendment on section 18(10)(a).

Mr Keyes moves that clause 18(10)(a) of the act, as set out in section 1 of the bill, be amended by striking out "French-speaking persons who are Roman Catholics" in the fourth line and inserting in lieu thereof "supporters of the Roman Catholic sector."

Mr Jackson: Could I get a fuller description? I understand the application of this amendment in

the previous bill, but I am having difficulty understanding its implications when we are deciding the larger or the lesser sum of francophone Roman Catholics, whether they be designated as supporters or whether they are French-speaking Roman Catholics. In particular, I am concerned that the francophone elements are only referenced in one. Could someone explain to me why "francophone" was dropped from "supporters of the Roman Catholic sector"?

Mr Riley: I think I can.

Mr Jackson: I hope somebody can, because I am confused.

Mr Riley: All right. "Supporters of the Roman Catholic sector" is a phrase that is already used in Bill 109. It describes who may be, and how one becomes, a supporter of the Roman Catholic sector. It is described in section 13 of that act. It basically says that a person paying rates in the region may be a supporter of the Roman Catholic sector if the person is a French-speaking person and a Roman Catholic. Then it goes on to say that one becomes such a supporter in any given year if he appears on the assessment roll as such—I am paraphrasing here—or if he gives notice under clause 13(3)(a).

The Chair: Thank you for refreshing our memories.

Mr Riley: It is drawn from the legislation which it amends.

The Chair: These two bills are pretty closely tied, I think, if you remember Bill 109, which is a much longer piece of legislation, as you know.

Mr Allen: Is there some other language surrounding that contextually that makes it quite clear that the reference is to French-speaking supporters of the Roman Catholic sector?

The Chair: I think the word "sector" in itself only refers to this particular board in the province.

Mr Riley: Yes. We are talking here about a sector of a particular type of board, the French-language board, and one can only be a supporter of that board, among the other criteria I mentioned, if one is a French-speaking person and a Roman Catholic.

Mr Allen: So the whole section is unmistakably referenced to the larger purpose of the bill. It does not deviate from that in any particular—

Mr Riley: No. I think there is a certain amount of difference in terminology between the Education Act and Bill 109. You do get certain phrases here that may look more different than they really are, I suggest, because these phrases are drawn

from Bill 109, from the pre-existing legislative context. I have no question that it does refer to persons who are French-speaking persons, which is a defined term, and Roman Catholics, both clear concepts.

The Chair: I think it is very healthy that these two acts use the very same language in all instances. Are there any further comments on this?

Mr Jackson: One very briefly. It has to do with the current litigation surrounding the methodology for assessment transfer that we have been served notice will be going to court. Is this amendment affecting, in any way, the court case which is currently being undertaken by—I am sorry, Madam Chair, I am still having difficulty getting my mind around this amendment. I have a limited understanding of the court case against the government with respect to the calculation. We are now further removing francophone Roman Catholics from the calculation if they do not declare as such, whereas under the previous bill, you simply had to be Roman Catholic and French-speaking in order to be qualifying for this funding.

Mr Riley: I think it is part of our concern that being French-speaking and Roman Catholic does not necessarily, of itself, indicate a desire to support the Roman Catholic sector or any of the four choices that such a person would have in Ottawa-Carleton. This reflects that and is consistent in that respect with what we have done in Bill 64. You will find the other provisions, the subsequent motions, also adhere to that principle.

Motion agreed to.

The Chair: Mr Keyes moves that clause 18(10)(b) of the act, as set out in section 1 of the bill, be amended by striking out "Roman Catholics, less the number of shares held in the corporation by French-speaking persons who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of the Ottawa-Carleton French-language School Board" in the fourth, fifth, sixth, seventh, eighth, ninth and tenth lines and inserting in lieu thereof "separate school supporters who are not supporters of the Roman Catholic sector."

Motion agreed to.

1830

The Chair: Mr Keyes moves that clause 18(10)(c) of the act, as set out in section 1 of the bill, be amended by striking out "French-speaking persons less the number of shares held in the corporation by French-speaking persons

who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of the Ottawa-Carleton French-language School Board" in the third, fourth, fifth, sixth, seventh, eighth, and ninth lines and inserting in lieu thereof "supporters of the public sector."

Motion agreed to.

The Chair: Mr Keyes moves that clause 18(11)(a) of the act, as set out in section 1 of the bill, be amended by striking out "French-speaking persons and who are Roman Catholics" in the third and fourth lines and inserting in lieu thereof "supporters of the Roman Catholic sector."

Motion agreed to.

The Chair: Mr Keyes moves that clause 18(11)(b) of the act, as set out in section 1 of the bill, be amended by striking out "Roman Catholics in the assets giving rise to the assessment, less the interests of partners who are French-speaking persons and who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of the Ottawa-Carleton French-language School Board" in the fourth, fifth, sixth, seventh, eighth, ninth and tenth lines and inserting in lieu thereof "separate school supporters who are not supporters of the Roman Catholic sector in the assets giving rise to the assessment."

Motion agreed to.

The Chair: Mr Keyes moves that clause 18(11)(c) of the act, as set out in section 1 of the bill, be amended by striking out "French-speaking persons in the assets giving rise to the assessment, less the interest of partners who are French-speaking persons and who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of the Ottawa-Carleton French-language School Board" in the third, fourth, fifth, sixth, seventh, eighth and ninth lines and inserting in lieu thereof "supporters of the public sector in the assets giving rise to the assessment."

Motion agreed to.

The Chair: All right, I have an amendment from Mr Jackson which adds a new subsection to section 1. Would you like to speak to that, Mr Jackson? This is the last amendment that has been presented to me to this moment.

Mr Jackson: This is left over from last Tuesday. I have tabled and the government has shot down the revision to that. This was what legislative counsel and I had been working on for six days in order to get it here, so that is not being tabled today. You have dealt with my one standard amendment.

The Chair: Okay, may we consider section 1 of Bill 65 carried?

Section 1, as amended, agreed to.

L'article 1, modifié, est adopté.

Section 2, as amended, agreed to.

L'article 2, modifié, est adopté.

Sections 3 to 5, inclusive, agreed to.

Les articles 3 à 5, inclusivement, sont adoptés.

Title agreed to.

Le titre est adopté.

Bill ordered to be reported.

Le projet de loi devra faire l'objet d'un rapport.

The Chair: Thank you all very much. Then, tomorrow, if there is an understanding, the ministry will be presenting to us from between 45 minutes to one hour in length, beginning at 3:15 pm. Then we will begin between 4:15 and 4:30 with the Ontario Teachers' Federation, the French-language teachers, and the Ontario English Catholic Teachers' Association. I do not think we will get to the Federation of Women Teachers' Associations of Ontario, but if you would like to have them stand by, you may. Shall we just go for the three tomorrow?

Miss Roberts: There is a vote tomorrow at 5:45.

The Chair: So you would like us to just try and go for the three federations tomorrow?

Mr Keyes: I was going to ask Mr Jackson whether, when he did talk about it, he would be willing to do it tomorrow night, if we wanted to do it tomorrow night in order to take that one route.

The Chair: We are talking from 4:15 to 5:15 and then we are talking 5:15 to 5:45. We are still talking 6:15 to 6:30 even going with the three groups and especially if we have to break for a vote. I think we should have Mr Decker phone the federation of women teachers and say that it will be presenting on the next sitting day.

The committee adjourned, at 1836.

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Witnesses:

From the Ministry of Education:

Lenglet, Brian, Senior Manager, Policy/Legislation Liaison

Riley, Michael, Counsel, Legislation Branch



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Teachers' Pension Act, 1989

Loi de 1989 sur le régime de retraite des enseignants

Second Session, 34th Parliament

Tuesday 5 December 1989



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 5 December 1989

The committee met at 1522 in room 151.

TEACHERS' PENSION ACT, 1989

LOI DE 1989 SUR LE RÉGIME DE RETRAITE DES ENSEIGNANTS

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

Etude du projet de loi 66, Loi portant révision de la Loi de 1983 sur le régime de retraite des enseignants et apportant des modifications connexes à la Loi sur la profession enseignante.

The Chair: I would like to begin Bill 66, the Teachers' Pension Act. We are going to begin today, as we have agreed, by having presentations, first from the Treasury and then from the Ministry of Education. We also have representatives of the Ministry of Labour here. I have asked Treasury and the Ministry of Education to try to contain their presentations to 20 minutes so that we will have 20 minutes for questioning. The Ministry of Labour is not going to be making a presentation. They are here as resource people and can be called upon during the question period. These people will be here also for clause-by-clause.

From Treasury we have Kathy Bouey, Bruce Macnaughton, Sandra Tychsen and Randall Dutka. I would like to ask which of you is going to make the opening remarks.

MINISTRY OF TREASURY AND ECONOMICS

Ms Bouey: My name is Kathy Bouey. I am the director of intergovernmental finance at Treasury and I will be making the presentation. If I may quickly introduce the panellists, Randall Dutka is to my right. He is a partner with Peat Marwick Stevenson and Kellogg. They have been providing us with some outside actuarial advice during these deliberations. Bruce Macnaughton, to his right, is the assistant director in my branch. Sandra Tychsen is the director of the finance policy branch in Treasury and Economics.

In front of you I believe you have a copy of a navy blue bound book that contains the presentation under tab A. Could you turn to page 3 to begin?

The policy development underlying this bill results from an extensive process of study, consultation and discussions with representatives of the plan members that began with the May 1986 budget. We are going to provide you with a description of what the very basic things are involved here, what the pension is intended to do and how it is now financed before coming back to what the study said and where we went from there.

On page 4 you will find a very basic definition of what a pension is intended to do, which is to provide a retirement income related to earnings from employment, a regular income for the remainder of the life of the plan member or his or her spouse. The degree of replacement depends on the length of work experience with the employer. It also depends on the type of pension that you have.

There are two basic types of pension plan. There is a defined contribution plan and a defined benefit plan. Under a defined contribution plan, the contributions go into a fund. They earn interest and whatever annuity can be bought at the time the person retires is what he gets. Under a defined benefit plan, by contrast, the member's pension benefit is specified by a formula. That can be everything from so many dollars per year of service to the type of thing in this case, where it is based on final average earnings; that is, the best five years of salary and the number of years of service.

Generally, defined benefit plans are required to be fully funded; that is, the contributions plus the interest earned in the working years are intended to pay for the benefits. This is consistent with paying for services as they are performed. If the accumulated funds are insufficient, the plan sponsor must make payments to the pension fund to make up the shortfall.

If you turn to page 5, there is a summary of how these pension funds are now financed. The basic benefit, the part provided by the formula, is financed through 6.9 per cent contributions made by the government and by teachers. Since the Pension Benefits Act of 1965 the basic plan has been required to be fully funded; that is, that benefits are paid for as they are earned. The government pays for the deficits and has paid out \$1.2 billion since 1966 in addition to its regular

contributions. That is worth \$4 billion in today's dollars.

The indexation benefit was introduced in 1975, to take effect in 1976. It takes the basic pension and adjusts it for inflation each year. It is financed through a one per cent matching contribution rate, again paid by the government and by teachers. However, it was designed to be partially funded, so that the benefits of the retirees are paid for from the current contributions. It was understood from the outset that contributions would be raised as required although no increase was permitted in the first six years. Review committees composed of government and teachers have looked at the adequacy each year. The Pension Benefits Act was amended at the time that the benefit was introduced to allow for this form of funding for indexation benefits.

Turning to page 6, there is a description of the problem. The indexation fund will be exhausted by early in the next century; there will be no money to pay for the indexation benefits. The reason this is occurring is due to two decisions that were made when the fund was established in 1975. First of all, the contribution rate was not set high enough to pay for benefits as they were earned by those working. Indeed, it was only about half the rate required to pay for current service. Second, the benefit was provided retroactively to those then working, but without corresponding funding.

For example, suppose somebody had been working 20 years by 1976 and retired in 1989. For the first 20 years they were working no contributions were made for this benefit. For the remaining 13, one per cent was made by each of the government and the teachers. However, the indexation benefit they would receive was paid for as if the contributions had been made the whole time. I might note that people who retired before 1976 also received the same inflation protection, but it is paid for from the consolidated revenue fund.

What is happening now is that demographic changes are exacerbating the funding problems. On page 7 you see a chart that shows the ratio of those contributing to the pension plan; that is, the number of teachers versus the number of pensioners. When the fund started out that ratio was greater than six contributors for every pensioner. It is now less than four and by 2005 it will be less than two. On page 8 it shows that the fund exhausts in 2006 if nothing is done.

For these reasons the Treasurer (Mr R. F. Nixon) announced a review of the financing of

indexation benefits in the May 1988 budget. Two expert reports were commissioned: one, by Malcolm Rowan, concerning the investment policy of all the public sector funds and another, by Laurence Coward, specifically concerning the funding of teachers' and public service indexation benefits.

The Rowan report suggested that plan members should participate in the pension fund decisions with governance based on the pension deal, and by the pension deal he meant who takes the responsibility for deficits and who shares surpluses. He suggested there should be consistency between those two things. In particular, he recommended that if the government stayed plan sponsor it should have access to surplus as well as responsibility for deficits. He also contemplated an arrangement where teachers, or plan members generally, and the government would share risks and rewards. His concern was to balance plan members' interests with taxpayers' interests, because he was concerned that the latter were not adequately being considered.

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For teachers' funds specifically, he recommended combining the basic and indexation funds and placing the funding on a sounder basis. He indicated a preference for full funding, but said it was beyond his mandate. The basic funds are now invested in government of Ontario debentures of 20- to 25-year terms; the indexation fund is invested in government deposits. He recommended that the funds be moved to market investments.

He suggested the funds should be administered by a board, at arm's length from the government. He preferred a board that dealt with both benefit administration and investment only and suggested that the board should have a government majority if government remained the plan's sponsor. He also recommended that the government not direct the board to make specific investments. Because the board has a responsibility to maximize the rate of return with the appropriate degree of risk, he was concerned about the board being asked to subsidize investments by being directed.

The Chair: Excuse me. I have asked that there be no standing in this room. I would ask that anybody who has not got a seat go to room 247, please, where there are TV monitors. Please continue.

Ms Bouey: The Coward report found that the teachers' indexation benefits had an unfunded liability of almost \$6 billion, and that does not include the people now being paid from the

consolidated revenue fund. Coward proposed again that the basic and indexation funds be combined and that the fund be placed on a fully funded basis. He suggested that the current indexation formula—that is, 100 per cent of the consumer price index up to an eight per cent cap but with a carry-forward to subsequent years when inflation is under eight per cent of the excess—be continued, if members were willing to pay.

For the future, he suggested that matching contributions should rise by 2.34 per cent each; that is, the government and the teachers should each pay 2.34 per cent more. He suggested the government fund the past deficit over 15 or 25 years, and by this he was referring to the past deficit of the combined fund, and that market investments be used in the future. He calculated the contribution rate on this basis.

Because only the Rowan report had had the input of interested parties, and these reforms were quite fundamental to the plans, it was decided that it was appropriate to have a process of consultation with representatives of the plan members and other interested parties. The Treasurer and the then Minister of Education, the member for Wentworth North (Mr Ward), as well as the Chairman of Management Board (Mr Elston), asked David Slater, a former chairman of the Economic Council of Canada, to consult with the interested parties and provide a report. His bottom line on the financial conclusions was essentially consistent with the Rowan and Coward reports, although he did provide more options.

In terms of the financial differences, he looked closely at the assumed rate of return on the market investments that had been used by Laurence Coward in making his calculations. He decided, based on the people he had discussed this with, that a real rate of return target—that is, above inflation—in the range of 3.5 to four per cent was appropriate for the investment target for these plans and that three to 3.5 per cent should be used for costing them. Coward had used three per cent. The implication of this finding is that the higher assumption implies that a lower contribution increase is needed, and it also means the lower past deficit.

The Chair: I am very sorry, but I cannot have people standing in the room. I know there are a president of a teachers' federation and an executive director. Maybe someone would like to show some deference to his president, because I do not like to send away a person who is going to be presenting. I have to ask others to return to

room 247. I do not know whether there is any room for media seating. I do want to have everyone in this room seated. It is a safety measure and I do not want to have the doorway blocked. If there is one seat for the media over here, that is fine. There usually are tables; that is what those tables are for. Is everybody ready to go again? I am sorry to have to interrupt. I guess we will get used to these rules as we progress.

Ms Bouey: Slater also suggested a startup or an investment reserve fund of \$825 million to encourage a partnership arrangement. He thought this fund could prepay pension reform, moderate the contribution increase and, as one of the names suggests, provide a contingency against adverse investment experience.

A very different thing he did in this report was to look closely at alternative governance approaches, including a full partnership and a member-run arrangement. In both cases, they were tied to the sharing of risk and reward. He recommended that discussions take place with the representatives of the plan members and he indicated a strong preference for the partnership arrangement because he saw the advantage of coincident interest: less misunderstanding and distrust.

On 22 September 1988, the Treasurer and the then Minister of Education initiated discussions with the Ontario Teachers' Federation. The scope of these negotiations, as outlined by the Treasurer, was to discuss full partnership and joint trusteeship with risk-reward sharing and joint fund management and also to examine concepts for joint decision-making, including negotiability.

In the Treasurer's view full funding was necessary, but he suggested that discussions take place over the required contribution rate and, relatedly, differences in actuarial assumptions, subject to being satisfied that the outcome would be financially stable. He also suggested that there be discussions about the responsibility for the plan, the past service deficit. Slater's startup and investment reserve fund was ruled out as being too expensive in view of other pressing priorities facing the government. In terms of investment, he suggested that discussions take place on some move to market.

During the discussions, the three governance options were elaborated. The underlying principle was that the bearer of the risk—that is, whoever is responsible for deficits in the plan—should be entitled to the surpluses and that representation on the board managing the plan should be consistent with the risk assumed. The

three options then are: full partnership, which entails equal sharing of future deficits and surpluses and equal representation on the board; the member-run fund, where the plan members would be responsible for all future deficits and entitled to all future surpluses and would have the majority of the board; or, failing agreement on either of those two options, that the government remains the sole sponsor. Under this, the government continues to be responsible for all deficits and is entitled to future surpluses. The government would also have a majority on the board.

The area that had the most interest was the partnership area. However, no agreement was reached. The problem areas: First, on the risk-reward there was some concern about how to share the deficits. It appears that the partnership option, which my colleague from the Ministry of Education will elaborate upon later, may have removed this roadblock. Second, there was a concern that the government's position, based on the expert advice we have, is that a contribution rate increase of one per cent is necessary to pay for the plan as it now exists. That was not acceptable without significant benefit improvements which, in turn, increased the cost of the plan in the future.

The final area was a demand for binding arbitration. The government has proposed, in the partnership arrangement, that there be a joint board with a neutral chair so that the neutral chair would vote only in the case of deadlocks. As a result, all disputes about benefit adjudication, benefit administration and investment policy could be dealt with at that board. There is also a proposal for a discussion process, a negotiation process, over benefits and contribution rates that would end in mediation. The concern over arbitration is outlined in the Rowan report. It is a very different process from dealing with wages in that the benefits are being paid much later than the normal life of a contract. They may be paid 15 years after the next three-year period, for example.

The second thing is that there is no way in a pension plan of knowing the true costs of those benefits until the actual payments take place. You can estimate it but you cannot be sure, and there can be quite a lot of difference. As you will see from the partnership option, we have tried to construct an arrangement so that there is no ability for the government to act unilaterally instead.

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At any rate, while negotiations continued all fall and resumed in February and went through to May, no agreement was reached. In January 1989, the Treasurer indicated that the financial reforms would proceed because he was concerned about the deteriorating situation of the indexation fund, but the government's alternatives would be left open for the future. The 1989 budget contained the government's financial commitments for these reforms on the basis that the basic and indexation funds would be combined and fully funded. The past deficit would be paid over 40 years—it is estimated at about \$4 billion—and it would be a schedule of flat dollar amounts that grows with payroll.

Market investments would be permitted in the future, administered by an arm's-length board that would also deal with a benefit administration. The matching contribution rate would rise by one per cent, and again I would stress that those calculations are based on market investments and the future costs of the plan. They do not incorporate the past deficit. In the absence of an agreement, government sponsorship would be the option selected.

Page 15 indicates the cost of the reform measures to the government over the next five years. It also contains estimates of the impact on plan members, both before and after tax. On page 16 there is some basic information on the actuarial calculations that were made that underlie these numbers. The difficulty in costing a pension plan is that it is a very long-term commitment. You have to look at the cost of benefits that may be received 60 or even 80 years from now and figure out whether there is going to be enough money to pay for them.

As a result, the assumptions that are made are very long-term in nature. The inflation assumption that was used was 4.5 per cent which is within the range commonly used by actuaries. The more important variables, though, are the spread between the inflation rate and the rate of return and the salary increase. As noted before, David Slater had suggested three per cent to 3.5 per cent real. We consulted with actuaries, financial and investment experts. We looked at historical data to get a sense of the implications of risk. We could get support for going to eight per cent but no higher, and that was based on a real amount of 3.5 per cent.

The Chair: Ms Bouey, are you going to be summing up? Are you almost at the end of your presentation?

Ms Bouey: Yes. Finally, the salary increase was one per cent, which is basically just the

economic component of the increase, because the great increases are handled separately. The other summary data are listed here. The calculated rate of increase on which the one per cent was based is 9.05, and 8.9 is specified in the bill. We did not want to go higher for a number of reasons. First of all, earlier calculations had suggested that this was in the approximate range. It would depend on whether the pattern of new entrance was changed and also how the administrative costs evolve.

On the last page we have a summary of what the bill actually does. It consolidates all components of the pension, the basic fund, the indexation fund and the liabilities in the consolidated revenue fund, by transferring the other components to the basic fund as of 31 December 1989. This is assuming the bill goes into effect by then. The Ontario Teachers' Pension Plan Board is established on 1 January to administer the plan and the investment fund. The custody of the fund is transferred to the board on 1 January 1990 through the issuance of debentures.

The matching contribution rate increases by one per cent on 1 January. The government begins to make payments for the past deficit on that date based on a preliminary estimate which is subsequently recalculated by the board as part of the initial valuation. In that valuation the minister and the Treasurer will also be asked to sign off in view of the long-term commitment. That is the end of the presentation.

The Chair: Thank you very much. I am going to offer the committee an option: Would you like to have 10 minutes of questions from the Treasury officials now, or would you like to have all the questioning of 20 minutes at the end after we hear from the Ministry of Education? You have that choice.

The thing I am thinking of is that we are going to have trouble with microphones when there are going to be now eight people sitting at the witness table. But whatever you would like to do, I am at your command. Do you want to hear the Education people?

Mr Keyes: I might suggest that we seek questions now but not rule out the total possibility that one may come to a person after another presentation, as long as we keep the time factor in mind.

The Chair: That is what I want to do because we have presenters waiting. So 10 minutes now? Any questions? Mr Jackson, would you like to wait.

Mr Jackson: No, I would like to ask questions.

Thank you for your presentation and the format in which you have made it. It is very helpful. I want to focus in on your statement that there were negotiations occurring consistently throughout the fall. Could you elaborate on the nature of your discussions, with whom, and specifically what items Treasury was being called upon to discuss?

Ms Bouey: I think that the scope of the negotiations is outlined on page 12 of the presentation. The negotiations took place between a committee of the Ontario Teachers' Federation that had a mandate from its organization, two people appointed by the Treasurer and two people appointed by the Minister of Education. It did cover everything from the different governance options to the funding arrangement, the actuarial assumptions and the investment policy.

Mr Jackson: You use the word "negotiations." I have a clear understanding of what that means, but I am trying to get a better sense of what actually was going on in the room. What kind of authorities, what kind of ground was gained or lost or exchanged with respect to some of these points?

Ms Bouey: I think that there was a lot of detailed working out of the partnership arrangement, turning to, for example, the process of changing the plan. For example, in terms of the funding, the government agreed to pay the past deficit of \$4 billion in those negotiations, provided the future was fully funded. In terms of costing the plan, in response to a view that maybe the investment return should be higher, we had started off proposing that the plan be costed on the basis of the 3.0 real rate of return and subsequently moved to the 3.5.

In terms of the negotiation process, it was originally proposed on the benefits and contribution rate that there be consultations, and then it went to fact-finding and finally to the mediation, and ultimately to the proposal that will be outlined to you by my colleague from the Ministry of Education. So I think there was a fairly substantial movement from the government's perspective on that behalf. On both sides, though, there were modifications made to the original positions.

Mr Reycraft: I want to ask a couple of questions about the indexation benefit. The benefit is legislated, as I understand it, in the Superannuation Adjustment Benefits Act. Because it was established to be on a modified pay-as-you-go basis, I assume that there is no

provision at all for addressing any kind of long-term liability in the fund. Is that correct?

Ms Bouey: That is correct. The understanding that we have of our legal obligation in terms of that fund is that the onus is on the government to review the funding status to make sure that there is money in the fund to pay for the benefit, but the government is not obliged to pay that liability itself.

Mr Reyecraft: Has the fund ever been reviewed?

Ms Bouey: It was reviewed, as I understand it, annually, starting one year later. However, the act did not permit a recommendation to change the one per cent level for five years after 1975. It was a joint committee of teachers and the government that reviewed the funding arrangement each year.

Mr Reyecraft: Was the act reviewed after 1980?

Ms Bouey: Yes, each year; even last year it was reviewed.

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Mr Reyecraft: Were there never any recommendations to increase the contribution rate?

Ms Bouey: That is correct.

The Chair: If I may ask the Ministry of Education to come forward now, that will give us a little bit of flexibility: Janet Skelton, Margot Nielson and Nancy Hoch. I am sure you will be back at the table before long.

Janet, will you be presenting?

Ms Skelton: Yes.

The Chair: We are going to the black document?

Ms Skelton: Yes, the black binder.

The Chair: I presume you all have that. We will have the same time frame of 20 minutes, please, if we can accommodate that.

MINISTRY OF EDUCATION

Ms Skelton: Before I begin, my name is Janet Skelton. I manage the teachers' pension section in the Ministry of Education, and with me I have Nancy Hoch and Margot Nielson, who work in the government and benefits area with me.

The material I will be going through with you this afternoon takes you through the basic provisions that have been set out in terms of governance and in terms of benefit changes and benefit provisions in Bill 66. As you know, three options for governance have been discussed with the Ontario Teachers' Federation and are being brought forward to the committee for consider-

ation. Before looking at each of those individually, I think it is worth looking at the way current responsibilities are set out under legislation.

In the current Teachers' Superannuation Act, the Teachers' Superannuation Commission is responsible for the administration of the pension plan in Pension Benefits Act terms. That means it looks after benefit adjudication, it does the record keeping, makes the pension payments, cash-flow management on a day-to-day basis, does communications and training about the content of the plan for the recipients and members, keeps the accounts and retains the actuary. It does not either invest the fund nor is it the custodian for the fund. At the moment those responsibilities are held by Treasury. The significant difference in the proposed Ontario Teachers' Pension Plan Board, however managed, is that it would have those two very significant responsibilities.

The role of the Ministry of Education on behalf of the government relates to the policy which is in the teachers' pension plan, to changes in its terms and conditions to what Malcolm Rowan in his report called the pension deal or contract. In other words, the negotiation of how it is governed and how the teachers and the government share in the plan.

So if there was a future change contemplated after the decision made at this committee, it would be the Ministry of Education that would be negotiating that. It makes the fund contributions to both the teachers' superannuation fund and TSAF, the teachers' superannuation adjustment fund, at present, and in future would make them to the combined fund. At the present time it has the final responsibility for the valuation. That responsibility would lie with the board in future.

The role of Treasury and Economics would change in future. It would continue to have its role of monitoring costs of public pensions in general, but would step down from its role as the investor and custodian of the fund. Provisions exist in Bill 66, when you go through it, for them to handle funds in the very short term should it prove necessary because a board is not ready to do so.

The two acts which have regulatory authority over pensions are the Pension Benefits Act, which is administered by the pension commission, and the Income Tax Act, through Revenue Canada, and those obviously remain the same now and in the future.

Just to quickly run you through in summary the finance and governance provisions, as Kathy mentioned, the basic fund and the indexation

fund will be combined. The government has made a commitment to pay the unfunded liability that results from the estimated valuation of about \$4 billion over 40 years.

The matching contribution rate of the government and the teachers will be increased by one per cent each. The management of the plan and the fund will be vested in an arm's-length board, the Ontario Teachers' Pension Plan Board, which will invest the assets. The investment will move on the basis of the net cash flow being invested in the market as the current debentures mature.

The options for sharing of risk and reward in the plan and for the management of the fund are three: There is a partnership option, which is a shared partnership with the Ontario Teachers' Federation; there is a government sponsorship option which is somewhat similar to the current situation, and there is a member-run option which would be a situation in which the members would take over the plan and would run it in the future.

In the partnership option, which is set out in this black binder, is the draft wording for each of the three options. They are not final; there is still minor tidying up to be done in them, but it sets out a legal set of wording in C, D and E. In the partnership of the government and OTF, each party would appoint three members to the board. Together they would select the chair for the board, and the wording contains a methodology for selecting the chair, so that they would come to a mutually agreed person.

I think it is easiest if we look on page 10 at the risk and reward before looking at how plan changes would be organized. The way in which risk and reward would be shared would be through a variable contribution rate. The contemplated amendment uses what is known as an aggregate funding method, which is a level funding method, that instead of yielding surpluses and deficits off the end of the balance sheet yields a change in contribution rate.

It has been done that way in order to facilitate the fact that the teachers would have to share their risks and rewards through changes in the contribution rate. The provisions are that the contribution rate could go up on both sides, up to 10.9 per cent. The contemplated rate at the moment is 8.9, so if you had financial problems it could increase by up to two per cent. At that point the benefit would have to be reduced. In other words, we are saying it is too expensive for either the teachers or the government to pay more than

10.9 per cent. We would have to look at benefits if it became more expensive than that.

Similarly, if the fund was extremely successful, the contribution rate could go down. When the actuarial valuation was done each three years, it would tell what the required contribution rate would be. If the contribution rate involves an increase exceeding one per cent, there is provision for the government to lend up to one per cent to the teachers to cushion the amount the teachers would have to pay on an annual basis. That loan is limited to a three-year period and would have to be paid back over 15 years. There is provision for only one loan to be outstanding at any point in time.

Given that methodology for operating financially, back on page 9 on plan changes and the way they would be taken, when the actuary completed the valuation, the parties would exchange their proposals for what should happen, knowing the financial status of the fund. Those proposals would be costed by the plan actuary, so that you would know what the financial commitments involved would be.

If the parties reached agreement, they would then request the Lieutenant Governor in Council to make the appropriate changes to the plan. If they could not reach agreement, either party could seek the help of a mediator and mediation would, hopefully, resolve any further differences.

Failing full agreement, the partnership option provides that the contribution rate found by the actuary to be required would be put into place at the next valuation. For example, if an increase of 0.5 per cent or a decrease of 0.5 per cent was required and you did not have agreement on whether to take an extra benefit or take the decrease, the default is that the decreased benefit would go into place. If you had agreement on what to do with the money in the sense of making a benefit improvement, then that would go into place.

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There is no provision in this option for the government to make changes to the plan unilaterally. The changes are to put in place what the actuary requires if there is no agreement, to do what both parties request the government to do by order in council, or if the board finds that for fiduciary reasons or because superior law has changed the Pension Benefits Act or the Income Tax Act so that a change is required and there has been no agreement on how that should take place, the government can then be requested to make the minimum change necessary to comply

with the law. Those are the only changes that can take place in the plan.

That means the only dispute you could have outstanding would be a decision to spend more money in the plan—ie, increase the contribution rate to buy new benefits—or to spend the extra room within the existing contribution rate on benefits rather than take a reduction in contribution rate. Other than that, everything is resolved within the provisions that are set out in the partnership option.

In terms of reporting relationships, the board would provide an annual report to both the government and to the OTF. Both partners would have the authority to review actuarial valuations—this is on page 10—and both partners would have the power to audit the fund and plan. As I said, the details of that are set out at tab C.

The Chair: You have about five minutes left.

Ms Skelton: That is fine. I will be very quick on the last two.

In government sponsorship, the basic differences are that the board would have a majority of government nominees and members, and all members of the board, both the teacher nominees and the government members, would be appointed by order in council. All changes to the plan would be implemented by the Lieutenant Governor in Council at the request of the government—that is the schedule 1 portion of the bill.

In terms of risk and reward, the government remains the plan sponsor and consequently is responsible for all deficits, current and future, and would be eligible to make use of surpluses should they arise—obviously a very distant future, given a 40-year paydown period. The board would report to the Minister of Education and provide its annual report to the minister. The minister would have to agree to have the actuarial valuation filed by the board with the pension commission, and the minister would have the power to audit the fund and plan.

In the member-run option we have set out a reasonable amount of detail of how it would be set up, because somewhere in this bill you must give all the necessary powers to function to a board, and the powers that the board would have are the same in all three options. The concerns of the government in terms of the member-run plan are in the protections the government feels it would need in future in terms of the investment it would continue to have.

In the member-run plan the government would want minority representation on the board of directors, which would otherwise be selected and organized by the members. It would want to

receive the annual report, actuarial valuations and all the legal documents that had to be filed with the pension commission and Income Tax Act—those things. It would want to have the power-of-audit of the plan, which it would obviously have to do at its own expense because it is not its board.

Clearly, the main people involved are the members of the fund and it is up to the OTF in that circumstance to manage the fund. The government would commit to an 8.9 per cent matching contribution rate or any future lesser rate that was required in that circumstance. It is assumed in that provision that within a year of taking over the fund, what is now schedule 1 of Bill 66 would be taken right out of the act and registered as any other pension plan would be, with the Pension Commission of Ontario, and amended as any pension plan would be through registration of those amendments with the pension commission. Those are the basic provisions.

In benefits, I will not go through the full detail here. It simply sets out the existing provisions which I think most of you are familiar with. It is a best-five, two per cent a year plan, indexed to an eight per cent cap, with a rollover. There is a disability provision and a 90 factor for early reduction.

The significant changes in benefits are that the PBA provisions at the minimum level are being put in. That means two-year vesting, a 50 per cent rule and changes in death benefits, both pre- and post-retirement. We would be pleased to answer questions on any of those.

The major area of modification that was discussed extensively with the Ontario Teachers' Federation was changes in the provisions for purchase of credit in the fund, which moves to a fairly open system where you can purchase for leaves for up to seven years plus two years parental leave for each child. If you arrange to purchase within one year of return to work and make your payment within three, it is on single contributions plus interest. If you purchase after that, you have to pay the actuarial cost to the fund.

A former member coming back to the plan pays back what he took out, with interest. A person coming into the plan can transfer in prior pensionable service and pay actuarial costs for so doing.

There is no necessity to have a reciprocal agreement, but there is provision for reciprocal agreements to be continued in the plan and they would be renegotiated on an actuarial basis. Those are the basic significant changes.

On pensioners, there is a provision for pensioners to be re-employed for 95 days a year for up to three years without contributing to the fund or having their pension affected, after which they would become members again.

For part-time teachers, we had a lot of problems with the wording in the old legislation. We have tidied up the problems that existed there and at the same time prorated the reduction factors for them so they would retire on the same basis and with the same kind of reduction as a full-time employee would.

Those are the basic changes in the act.

Mr Reycraft: Thank you for the presentation. When you were discussing the finance and governance provisions on page 7, you indicated that the government has made a commitment to pay off the \$4-billion deficit. Is the government not required to assume responsibility for that deficit under the Teachers' Superannuation Act?

Ms Skelton: No. The Teachers' Superannuation Act deals only with the basic plan. It does not include the indexation of the plan. So the liability under the Teachers' Superannuation Act is simply for deficits that arise in relation to the basic benefit, not in relation to the indexation benefit.

1610

Mr Reycraft: Did the Ministry of Education, the Ministry of Treasury and Economics or whoever was involved in the discussion/negotiation consider any other options as a way of dealing with that deficit?

Ms Skelton: Other than the government paying it off?

Mr Reycraft: Yes.

Ms Skelton: During the early stages of the discussions with the teachers there was a proposal to share that, as there was to share the future risks and rewards of the fund. The teachers were not particularly interested.

The Chair: You are not finished, Mr Reycraft?

Mr Reycraft: I have more questions, if I could.

The Chair: I just want to say we are fortunate to have a member of cabinet with us today—that is not always our fortune—in the Minister of Mines (Mr O'Neil). He has not become the Minister of Education, if anyone thinks he has. He is just a very interested member of cabinet who is spending his afternoon with us.

Mr Reycraft: Following up on the same line of questioning, can you tell us at what point in

those negotiations, which I assume started some time after the 1986 budget announcement, the government or the ministry agreed to assume responsibility for that \$4-billion deficit?

Ms Skelton: It was about this time last fall. Kathy Bouey can correct me, but I think it was November of last year.

Mr Reycraft: Under the partnership model—I just want to be clear on this—as you explained it, there is no ability for the government, without going back to the assembly, to be able to make any changes to the benefit provisions or to the contribution rate unilaterally. Is that correct?

Ms Skelton: That is correct.

Mr Reycraft: So changes to the rate would occur if there was a surplus and government and teachers were not able to agree on how that should be dealt with; it would just automatically result in a reduction of the rate.

Ms Skelton: Yes. The provision is there for what the actuary finds to be required to go into place if an agreement has not been reached to do otherwise. It is not a decision the government would make.

Mr Keyes: I have a question on page 10 with regard to risk and reward; where the matching contribution could be as high as 10.9 per cent, it will now be 8.9 per cent. Has that been set by government or is that anything to do with other federal legislation? Under the member-run plan, if they so choose or if we so recommend, that would still pertain, would it not, in the bill?

Ms Skelton: The 10.9 per cent? No. In the member-run plan, the government's commitment is for 8.9 per cent. In the partnership, it could go up to 10.9 if both parties so agree. That is not matching a federal limit, if that was what you were thinking of. The proposed federal limit is nine per cent and we would have to have the permission of Revenue Canada to exceed that nine per cent level. Our understanding is that when the income tax provisions come down there will be provision to exceed the nine per cent with the consent of Revenue Canada.

The Chair: Are there any further questions on the Ministry of Education presentation?

Mr Reycraft: I have one other point, and it really relates back to the presentation by Treasury. Did either Mr Coward, in his report, or Mr Slater in his, make any comment about how disputes might be settled when they occurred in dealing with matters of improving benefits or changing the contribution rate?

Ms Bouey: Mr Coward made no comments on that area at all. Mr Slater indicated that there

should be some deadlock-breaking mechanism at the board of trustees and in the negotiation process. He did not indicate what that should be. He expressed concern in two areas in terms of trying to set up that process for the teachers' plan.

One is the problem that benefits and contribution rates for pensions are negotiated totally separately and with a separate level of government from the rest of the compensation package because, for example, the school board is the employer and, therefore, negotiates other benefits and wages with teachers.

Second, he was concerned about ensuring that the responsibilities of the board of trustees would not be in a conflict situation with the negotiation process, but he did not make any recommendation other than to say there should be some deadlock-breaking mechanism, which was what we have tried to address.

Mr Reycraft: Was there anything in any of the three reports that specifically addressed the matter of binding arbitration?

Ms Bouey: Yes, the Rowan report, speaking generally about negotiability of pensions, specifically recommended against binding arbitration. The reasons he gave were, first of all, that he considered pension benefits to be very different from wages because they are paid much later than the normal term of a collective agreement. For example, they could be paid 15 years after the arrangement was made.

Second, in a defined-benefit plan, a commitment is made to pay the benefit no matter what it costs and the costs cannot be known with certainty until they are actually paid out—in other words, much later on. He felt it was not appropriate, therefore, to have it considered by arbitration.

Mr Reycraft: Did Slater comment on binding arbitration at all?

Ms Bouey: Not really, no.

Mr Jackson: Then, by inference, you would agree that Coward did not exclude binding arbitration when he was referring to the need for a deadlock-breaking mechanism.

Ms Bouey: Coward did not say anything about negotiability whatsoever. He did not get into that whole area. Slater did not explicitly exclude arbitration, that is correct.

Mr Jackson: Slater's report came last, the more current report?

Ms Bouey: Yes, it was reflecting the views of interested parties that he had consulted.

The Chair: We have had two presentation, by the Ministry of Education and the Ministry of

Treasury and Economics. We also have representatives of the Ministry of Labour. We have about seven minutes left if we give this presentation the hour we had agreed to. You may do it as you wish.

Mr Jackson: I have one further question. It is my understanding the government has several amendments to table. Is that correct?

The Chair: I have not received any amendments.

Mr Jackson: Are we to understand that the deputants before us have been apprised of those amendments?

Mr Keyes: It is my understanding that they have been, but I will ask for clarification from Ms Skelton.

Ms Skelton: Yes.

Mr Jackson: Does your presentation reflect those amendments?

Ms Skelton: The presentation reflects the main government amendments. There are some other minor things that we have also reviewed with the Ontario Teachers' Federation where it has found some problems in wording, and we will be bringing them forward clause by clause.

The three main sections in your presentation this afternoon have been reviewed with them.

Mr Jackson: So that I understand, there is specific clausal language which is in the latter part of your report?

Ms Skelton: Yes.

Mr Jackson: Am I to understand that they are in this report, even though they have not been handed out?

Ms Skelton: They are in that report. They are not final language, which is why they have not been formally given to the committee, but the language, as far advanced as it is, has been shared with the Ontario Teachers' Federation.

Mr Jackson: I am looking at notations here that show drafts from 29 November, which are sidebar notes. When will we receive those amendments?

Mr Keyes: When did you receive them?

Mr Jackson: No, when will we receive them? I am asking the parliamentary assistant who is in control here.

Mr Keyes: You have before you—

The Chair: I thought the Chair was in control.

Mr Keyes: You are right.

Mr Jackson: You have already said you do not have them, so I was asking him. He said he had them. That is what I meant by control.

The Chair: Mr Keyes, have you the answer to that question?

Mr Keyes: In C, D and E, in the back of your presentation, you have the draft ones.

Mr Jackson: That is a rather unorthodox way of tabling amendments to a major piece of legislation. When are you going to table the actual amendments to the bill? Do you not have them with you today?

Mr Keyes: No, I do not have them for tabling today.

1620

Mr Jackson: Do the teachers' federations which are making presentations in the next few minutes have the specific amendments typed out and identified?

Mr Keyes: Do they have them? Are you asking them?

Mr Jackson: No, I am asking you, as the parliamentary assistant, who is essentially representing the minister at this table. We have established now that the chair does not have the amendments. You have indicated that you have them.

Mr Keyes: No, I am sorry.

Mr Jackson: You do not have them.

Mr Keyes: No, I did not say that I had them.

Mr Jackson: You do not know whether the teachers' federation has been given specific copies of these amendments.

The Chair: Ms Skelton seems to know what has been done with at least the ideas that are being considered as amendments.

Ms Skelton: The ones that are stamped "draft" that are in your book are the same ones that the Ontario teachers' federations have. We expect to have the formal amendments available by the end of this week, and we would certainly—on the three options that you have to consider—hope to have them available for committee immediately after that. Obviously, we have to check them finally before—

Mr Jackson: Just so I understand then, the deputants, the presenters today will have had the amendments but the committee will not.

The Chair: If I understand what Ms Skelton is saying, I think—

Mr Jackson: You have them, Mr Keyes. You have seen them, but we have not seen them.

The Chair: I think there is a misunderstanding here and I would like to have it corrected.

Mr Keyes: Let me correct what I think has just been left as a misunderstanding here, and I will

ask Ms Skelton to correct me. We all have this binder before us. All of us have sections C, D and E, which are marked as draft amendments to the act.

Mr Jackson: You are not sure but you are pretty sure this is what you are going to table.

Mr Keyes: There may be a word or two for clarification. These are three. Every member who is a deputant from OTF has these same draft resolution amendments or amendments that you and I have. The very final wording of those, as Ms Skelton has said, is not before you, and I personally do not have them. Finally, there may again be a single word and I believe there have been discussions with the deputants in that regard.

Mr Jackson: If I may, how many amendments are we talking about here?

The Chair: Ms Skelton, can you tell us the number that are proposed at this moment? How many do we have in the binder, I guess, is a start?

Ms Skelton: The binder is not a case of taking all those amendments. There are three sets of amendments, one of which you would select at the committee. Only one set of those amendments can go forward.

Mr Jackson: I am looking at this amount of paper here.

Ms Skelton: That is right. That is three sets of government material. There is a member-run set, a government sponsorship set and a partnership set.

Mr Jackson: I am with you. It is behind door number 1, door number 2 or door number 3. I understand how we are going to do this. I am just trying to get how much a mystery it was going to be to us, as legislators, and how much of it was going to be guesswork on our part. I am just now getting a better sense of how we are to handle this travelogue.

The Chair: I do think that we often do have amendments, even on major legislation, presented in their final form on the very day we are doing clause-by-clause. I know that is not ideal and I think in this circumstance we are going to get a preliminary to our actual clause-by-clause which is going to be quite helpful.

Mr Allen: My question has been answered.

The Chair: We have just finished the hour now. I could take one short question from any member of the committee. I hope that the people from the Ministry of Labour, Grant Huscroft and Romain Verheyen, will not feel that they do not

have a role to play here and will be with us, as I understand, in clause-by-clause.

We will go on now to the actual presentations.

Mr Jackson: If I could at least—

The Chair: They will be with us.

Mr Jackson: Yes, they will be with us, hopefully in body as well, but I guess what I am concerned about is that I specifically did request some information with respect to binding arbitration models in this province. Are we going to at least draw the committee's attention to the fact that research was done? I know the researchers worked quite hard. I asked for it for a very good reason, and perhaps we might have a few moments to look at that. It is of some relevance.

The Chair: Do you want moments to look at that right now? I am having difficulty with that in that we have a vote, as you know. We are going to have quite a bit of difficulty with timing.

We are looking at 4:30 to five o'clock for this presentation. Those of you who are waiting to present, we have the complication of a vote being thrust upon us today, but I think our committee agreed yesterday that we will complete these three presentations this afternoon or into the early evening, which may mean sitting until 6:15 or 6:20. The committee cannot continue to meet while a vote is being called. We have to return to the House.

I know there has been a lot of work, a long time, go into this presentation, which has very interesting colours. We will begin. I would ask each of you to identify yourself for the purposes of Hansard. I have a feeling that each of you is going to have a little piece of this presentation, but I might be wrong.

Ms Polowy: Thank you very much. I am not sure whether I heard you correctly. Did you say that the presentation was half an hour in duration?

The Chair: I am very sorry. That is right, it goes until 5:30. I would like to say, for the record, we did some thinking over the weekend. We did meet your request to rethink our first decision and, as you know, the committee and the three parties have agreed to sit for two evenings next week to accommodate the regional hearings that you requested. I think we are starting on a very good, open playing field. I would still like you to remember, Ms Polowy, what I said to you last Friday. Clear, concise and current is helpful.

ONTARIO TEACHERS' FEDERATION

Ms Polowy: Thank you. Let me begin by thanking the committee for agreeing to our

request. We believe there are concerns that the teachers across the province would like to express to this committee and we will be pleased to do that.

I am Beverly Polowy, president of the Ontario Teachers' Federation. I have with me today members of the committee who have been involved in our discussions with the government over the past 16 months. I would introduce to you, on my far left, Guill Archambault, Suzann Jones, Jim Head, David Kendall, and I believe somewhere in the room is Jim Causley from the Superannuated Teachers of Ontario, who was part of our committee but seems not to have found a place at the table.

The Chair: If he would like to join you, he could. The microphones do have a bit of a range. There is a member's seat here beside Mr Allen.

Ms Polowy: Thank you very much. I would also bring to your attention that we have with us today members of the Ontario Teachers' Federation executive, including the presidents and general secretaries of the five affiliates. We have, as well, the members of our biennial review committee support staff and executive officers from the affiliates who have been assisting us over the year. Representatives from the teachers' groups who will be presenting are here as observers today. The representatives are from various areas across the province, from Brant-Haldimand, Bruce, London-Middlesex, South Niagara, Lincoln, Ottawa-Carleton, Peterborough, Renfrew, Simcoe, Thunder Bay, Hamilton-Wentworth, Waterloo-Wellington, Windsor, Metropolitan Toronto, Cornwall, Peel and, of course, our group representing the teachers of Ontario.

I would once again thank the committee for extending the time period so that the groups from the local areas would be able to make their presentations next week. We are also pleased that we will receive some additional time at the end of the hearings to do some summing up.

The Chair: We already have granted a half hour. I have to say that I do not yet have in my hand the approval of the three House leaders, but we have made the request and I feel there is a will there to proceed if the committee has requested it.

1630

Ms Polowy: Thank you, we do appreciate that. We will also be interested in the clause-by-clause study that the committee will be carrying on and we have some amendments proposed in our brief which you might find useful.

I would like to refer you to the brief just for a moment and let you have a glance at the sections. We have, following the table of contents, the executive summary, which deals with the eight principles that we believe should form the basis for the design and operation of the new plan and then addresses the critical issues of governance, negotiability, dispute resolutions, sponsorship, benefits and financing.

Section A simply outlines the groups that we represent. As you know, we have represented here the 117,000 teachers employed in the publicly supported elementary and secondary schools of Ontario; as well, the 34,000 occasional teachers, school board supervisory officers, university professors, community college instructors, federation officials and designated school instructors who participate in the plan, along with some 33,000 individuals who are retired. So all of those groups are represented here.

Behind tab B you will find a brief look at the three governance options. Our preference is for the joint management option, so we have covered that in depth in tab C, and we will look at that to some degree later.

A section on benefits is outlined for your study. The financing of the plan, both for past costs and in the future, you will find in section E. Section F has our conclusion. Section G begins with the appendices; a couple of charts we will be referring to. Section H has a summary of the recommendations.

For our use, we have done a section on Bill 66, and the schedules 1 and 2, where we will be addressing clausal analysis. The final section, section J, is a section where we have included some of the draft proposed government amendments that were referred to earlier and some proposals for amendments which we have done in a facing section.

Each of the officers will be presenting a section of the brief, as I mentioned.

I would like to begin by looking just quickly at the executive summary and the eight principles upon which we think the operation of the new plan will work most effectively. I am on page ii, dealing with the equal partnership, the whole area of sponsorship, the section on dispute resolution, benefits, separate valuations for the funding of the plans, the unfunded liability of the teachers' adjustment plan, how future gains will be used and the contribution rate. Each of the sections under the critical issues, the governance area, will be addressed, as I said, later, as will be

other sections, and this is just a brief look at an overview of the brief.

I would ask now if Dave Kendall would begin with tab B, the options for governance.

Mr Kendall: Thank you. I am dealing with pages 2, 3 and 4. Committee members are well aware, from the many previous discussions that the Ontario Teachers' Federation and its membership have had with you and your colleagues that we are extremely dissatisfied with the proposed legislation and certainly view the three options for governance as unacceptable in the present format.

From the outset of discussions on the pension issue, the Treasurer (Mr R. F. Nixon), in his letter to OTF in September 1988, raised optimism in our minds that the offer was there for a bold approach to the management and investment of our pension funds. The Treasurer was obviously caught up with Dr Slater's concept of a new partnership with joint trusteeship between the government and teachers.

After 16 months, what teachers have sadly realized and what has become painfully obvious is that the Treasurer really meant that the way in which government would deal with pension matters would be even more paternalistic than currently exists. Instead of Dr Slater's concept of a fresh start, with joint trusteeship and equal partnership, we are facing a situation where authority over pensions will transfer from the Legislature to cabinet, while at the same time removing fundamental safeguards for plan participants.

The three options, government control: Under the proposed option of government control, it is our belief that teachers will be afforded merely token representation on the board of a new pension plan, that wide-ranging power to dramatically amend the plan will be shifted from the Legislature to cabinet and that cabinet will then have full authority and power to unilaterally amend the plan without teacher input.

The government's plan to seize and expropriate future surpluses from our fund, in our view, is totally an abuse of legislative power and will not go unchallenged by the teachers in this province.

Joint management: The architects of the pension legislation, in the view of OTF, have a very misguided sense of fairness in their interpretation of how a joint management agreement, with the concept of equal partnership, would function. This legislation does not provide the federation with authority to negotiate on behalf of plan participants, and Beverly will address this matter in further discussion.

Teacher control: Obviously, the concept of teacher control has a very attractive appeal to it. Teachers are not ready for such a giant leap at this time but certainly may opt for such in the future. However, the provisions for this option in the current legislation present a wide interpretation of what a total teacher-controlled plan would incorporate. In our view, this option would require massive amendments to reach a level of acceptability. The approach to this section allows for a decrease in government contribution and never for an increase. Could we really believe that the government would allow teachers to unilaterally control our pension plan with sole authority to dictate contribution rates?

For the first time in our history, teachers believed with guarded optimism that there was a sincere opportunity to reach a satisfactory agreement on the pension issue. We do want an authentic, equal partnership with government in the governance of our pension plan. We do want a plan that provides a real opportunity and authority to negotiate the terms of an agreement. We do want a plan that legitimately places the pension plan and its amendment process at arm's length from the government. Naturally, in our view, such a plan would contain a mechanism for resolving disputes. With such an agreement in place, OTF, in good conscience, could share with government in the risks, rewards and responsibility in operating our pension plan.

Apart from the problems associated with the three models, there are other issues to be resolved. There are four recommendations to be addressed in this section that I am dealing with.

All three governance options create dual and overlapping authorities with regard to determining the composition of the board and setting out its powers and duties. OTF recommends that amendments 7, 8 and 12 be deleted and, in amendment 138, that it be amended by the addition of a section to read, "The board shall exercise its power solely in the best interests of plan members and for the exclusive purposes of providing benefits to members and defraying reasonable expenses of administering the plan."

1640

Ms Polowy: The section I will be dealing with is found beginning on page 5.

The federation is here in front of the committee today to indicate to you our clear preference for the partnership model. The principles under which we believe a partnership model will operate have been outlined for you. It is an equal partnership for the future governance of the teachers' pension plan, one in which all future

risks, rewards and responsibilities are shared equally.

The second principle is that the government of Ontario and the Ontario Teachers' Federation agree to joint sponsorship of the teachers' pension plan and following that, that the government and the Ontario Teachers' Federation enter into an arrangement which provides true negotiability of pension issues and allows for the resolution of disputes between the government and the federation.

It is our clear preference for an equal partnership arrangement. We have been involved in discussions for over a year on and off, and the federation did not take any decision lightly to accept the Treasurer's invitation to enter into negotiations. The federation and its affiliates gave careful consideration to the structure and management of current pension arrangements before agreeing to pursue an equal partnership model.

The advantages of entering into an equal partnership and joint trusteeship we believe outweigh the paternalism of the current structure and the risks of shared sponsorship. The awareness level of all teachers in the province has been raised to such a degree that we do not believe we can go back to a more paternalistic arrangement.

The proposal for partnership had to come from government. It could not have been initiated by us. Government was the sponsor of our plan and so an invitation to look at cosponsorship was one we took very seriously. We believed that major concessions were needed and that the federation would have to be prepared to assume an equal share of risk through the joint sponsorship. We believed that government would have to relinquish its absolute control over teacher pensions.

The federation has, by accepting joint sponsorship, shown that it is willing to enter into a truly equal partnership. Government, on the other hand, by refusing to accept a dispute resolution mechanism, has demonstrated its resolve to retain control over pensions.

As we told the Premier (Mr Peterson) last June, and you will find this on page 7: "...we are prepared to share the risks and rewards of a jointly managed pension fund. The executive finds it difficult to understand why the government has walked away from the opportunity to share sponsorship with teachers."

This is a significant responsibility for the Ontario Teachers' Federation to assume and one which few groups of employees have been willing to accept. In our discussions we came to recognize that individuals could not guarantee

their own pension benefits. The sponsorship model then, for the future, must be sensitive to this. The aggregate funding model which has been proposed by the government is a positive response to this concern. My advisers agree that there are advantages in the method, and we want to ensure that it will be available to teachers so they will not be faced with any big bill in the future. With this in mind, OTF is prepared to consider a modified version of the sponsorship model.

The issue of negotiability has been raised earlier in our presentation today, and I want to review for you the fact that teachers operate under the School Boards and Teachers Collective Negotiations Act for all parts of their compensation except pension. As negotiators, we interact on an equal basis with school boards. We have the right to strike or select binding arbitration in order to resolve disputes. In pensions, on the other hand, we have the right to discuss. There have been no real negotiations up to this point in time. The end result has always been government legislation.

Pensions are a very important issue to teachers. We contribute a very large amount of our salaries. Dr Slater's report has been referred to, and on page 8, we state that he recognizes that the right to negotiate pension matters is critical to the ability of teachers to function as equals in a new pension partnership.

We support the option that has been offered of regular pension negotiations every three years between the government of Ontario and the Ontario Teachers' Federation. Disputes are bound to arise between any partners who would be negotiating for amendments to a plan. We believe that disputes, as they are settled now with an adjudication set up with the Teachers' Superannuation Commission, would continue on that basis, so that individuals who were concerned about their level of benefits would be able to discuss these concerns with an adjudication committee.

Where the board of directors of a new corporation would be set up, the management and administration of the teachers' pension plan could be conducted through discussions among members of the board, and the neutral chairperson, as has been alluded to, would function as a person who could adjudicate disagreements at the corporation level.

This neutral chairperson, it was envisioned, could employ a variety of mediation and conciliation techniques to get the directors to agree and resolve their differences, or issues

could be referred to the government and to the federation as partners. The chairperson would be empowered to cast the deciding vote.

In negotiations between the partners, however, the partners would have the responsibility for plan amendment. They would be discussing the benefit level, the contribution rate and the structure of the plan.

A possibility of impasse exists in any negotiation. OTF is prepared to consider alternatives for reaching finality that range from binding arbitration to authorizing the neutral chairperson to specify to the partners the route of finality. On page 10, we have made some suggestions about techniques, and we have included in our amendments the process of arbitration. But let me say, we are willing to consider alternatives, as long as those alternatives result in some final method of reaching a decision.

The federation must have meaningful opportunity for decision-making, and the government has not accepted any method which will bring finality. The government has not relinquished control, even within a so-called equal partnership.

What is required? On page 11, we have suggested, under subsection 17(1), an amendment which we believe would include OTF as an equal partner. Section 17 authorizes OTF to represent plan members, but stops short of giving OTF the authority to negotiate an agreement, and our amendment would include, in the final phrase, "and the negotiation of an agreement pursuant to section 10 or section 11 of this act."

In order to function as an equal, OTF requires not only this authority as the bargaining agent, but also the authority to enter into a joint agreement. Section 10 of the bill proposes the terms for a joint management agreement, and we have added, at the top of page 12, an amendment which says "but is not limited to" to the stem, so as to open up the scope of any such agreement.

We have also dealt with the sharing of responsibility for deficiencies in the future, the application to be made of an actuarial gain, procedures for negotiation and for the resolution of disputes.

Under joint management, we believe that both parties must be authorized to amend. We have included amendments on page 13, first, to strike section 9, which is the amending section, and to add subsections 10(2) and 10(3). The clauses that we have included in subsection 10(2) came from the original section 9 of the bill and tend to give the authority to the partners, to the Lieutenant

Governor in Council and the Ontario Teachers' Federation, to amend the pension plan.

1650

Subsection 10(3), found on page 14, specifies how any such amendments might be public and 10(4) resolves the problem of potential conflicts.

The government, as part of its partnership package, has proposed amendments to schedule 1, which are intended to establish a model for joint sponsorship. With some changes designed to improve the equity of the model and reduce the risk of short-term volatility, OTF is prepared to accept the model. Our response is found, beginning on the bottom of page 14, to subsection 25a(1). We see our amendments to that subsection as helping to pay off any advance that would be necessary to withstand the volatility. We drafted these amendments based on the amendments we had received or proposed language we had received from the government office earlier in November. We believe our proposal will work.

On page 16, there are amendments also for valuations on a going concern basis and on the solvency liability basis. The process for negotiation of plan changes, which we find in amendments to schedule 1, includes mediation. OTF has looked at the government's proposal, and we have used everything that would work, expanded the time lines and added in a final step. That step is arbitration by a single arbitrator. I repeat that we are willing to look at other alternatives as long as we have assurance that any dispute will receive final resolution.

The amendments to include references to the arbitration section are included below, and they look at expanded time lines, on page 17, for the proposal for mediation, on page 18, again expanded time lines, and on pages 19 and 20 the addition of a new section, 121a, and this is a proposal for submitting any outstanding issues to arbitration.

On page 20 and continuing, the amendments that have been proposed here are simply to include the Ontario Teachers' Federation as one of the partners in any of the proposed amendments. Subsection 125(2) amends the notice required to 10 days, since the time lines that were proposed in government legislation did not work as they were proposed. In subsection 126(3) we are asking for, rather than three candidates, four candidates for mediator. We think that a panel of four mediators to choose from would give more flexibility for finding someone who could be used as a mediator and then someone who could finally be used as an arbitrator.

We believe these proposals would ensure the ability of OTF to function as an equal within an equal partnership model for governance and we submit them to the committee for your perusal.

The next section of the brief deals with benefits, and Jim will speak to that.

The Chair: Are you intending to allow any time for questions from the committee?

Ms Polowy: Yes, we are.

The Chair: Because you are now halfway through your time.

Ms Polowy: Yes, I understand that. The major portion of our brief is based on the equal partnership model, and that is why that took the major portion of the time.

The Chair: Yes. I am just wondering. So you are saying you will give us, what, 10 to 15 minutes for questions?

Ms Polowy: At least.

The Chair: Okay. Mr Head, please.

Mr Head: Thank you, members of the committee. We are looking at page 23 on benefits and the four benefit changes OTF is seeking, two of which are at no future cost to the fund. OTF believes that the retirement criteria for payment of a pension without reduction should be amended to include the following:

35 years of service regardless of age: The maximum pension payable to a teacher is 70 per cent of the average of the best five salaries. Therefore, after 35 years of service, a member receives a 70 per cent pension. If a plan member teaches more than 35 years the average salary may increase, but the pension still cannot exceed 70 per cent. The contribution rate covers the cost of one year of service and the increase to the best five salaries. Therefore, for each year worked after 35 years, the fund gains a windfall profit.

In the name of fairness and equity, OTF believes that Bill 66 should be amended so that after 35 years of service teachers should be able to retire without a reduction in pension, regardless of age. There is no future cost to the fund.

Age 60 with 10 or more years of service: OTF proposes that at the age of 60 with 10 or more years of service, teachers should be able to retire without having their pensions reduced. This would allow people who started teaching later in life and people with broken service, most of whom are women, to retire at the same time as career teachers. In fairness, women should not be penalized for parenting.

Fair reduction factors for early retirement: The teachers' plan has two normal retirement criteria, age 65 and 90 points or the 90 factor. For each

point short of 90 a teacher's pension is reduced by five per cent; for each year short of age 65, a pension is reduced by five per cent. Consider therefore two examples of an 85 factor.

One teacher retires at age 62, therefore three years short, times five per cent; that is a 15 per cent penalty and if you take a \$30,000 pension, it drops therefore to \$25,500. The second teacher, using the 85 factor as well, but this time at age 55, is five points short of the 90 factor; five times five per cent equals a 25 per cent penalty or a pension of \$22,500, which is much lower.

OTF wants to amend to provide for a reduction of 2.5 per cent for each point short of 90. That would be fair to the plan and to the individual, especially women.

Adjustment to pensions of pre-1982 retirees: The pensions of teachers who retired after 1 June 1982 are based on the average of the best five salaries. If a teacher retired before 1 June 1982, the pension is based on the best seven years. Part of the surplus that the main fund now has belongs to the pre-1982 retirees and should be used to pay for the increases to their pension, once again at no future cost to the fund, and that is fair.

OTF requests that the pensions of pre-1 June 1982 retirees be increased by \$1,000 and the pensions of survivors of pre-1982 retirees be increased by \$500, which Superannuated Teachers of Ontario agrees to and is also fair in terms of the consistency we have outlined.

For the record, the amendments are found on pages 27 to 30, the retirement criteria are on page 27, the reduction factors on pages 28 to 29 and the pre-1982 retirees on page 30.

Ms Polowy: The next section of the brief is the section on funding and Guill Archambault will begin.

Mr Archambault: Funding is found on pages 31 to 39. I will deal with the past cost. Throughout the past 16 months of discussions, the government recognized its responsibility to pay the cost of the unfunded liability, which we came to call the UFL in the teachers' superannuation adjustment fund.

We commend the government for accepting this responsibility. OTF wants to ensure that the proposed legislation reflects this accepted government responsibility, rather than transferring part of it to the other partner.

1700

Our first concern relates to the concept of the new, merged plan. We believe that the government is presenting it as one plan, including the adjustment fund, thereby using the healthy

surplus in the main fund to write off some of the deficit in the adjustment fund.

OTF's position requires an initial recognition of two separate funds, and their separate valuations as of 31 December 1989, so that the actual amount of the unfunded liability in the adjustment fund is identified. The amendment that appears on page 36, subsections 2a(1), (2) and (3), tries to rectify this situation.

Once these valuations are completed, as of 1 January 1990 the new plan must also be valued using the same economic assumptions to establish a new base for future triannual valuations which, in turn, will set future contribution rates. The amendment at the bottom of page 36, clause 3(2)(a), addresses that concern.

This process, we believe, will ensure that the government schedule of payments will reflect the actual unfunded liability and will also ensure that the contribution rate of both partners will pay for only future costs.

I want to bring to your attention the amendment on page 37, clause 3(2)(b). In the spirit of partnership, we recommend that OTF be recognized as one of the partners in this initial valuation.

Finally, the series of payments, as set out in our amendments on page 37, subsections 3(3) and 4(4), and page 38, subsections 3(4a), (5) and (7), are attempts to ensure that the unfunded liability is actually paid by the government as a past cost rather than partially charged to both partners in future contribution rates.

Ms Polowy: Sue will continue with the funding section.

Ms Jones: The future financing of the plan is also a serious concern to OTF. We realize the difficulty of projecting economic assumptions and the demographic events for the next 50 to 60 years. These projections are necessary to determine a contribution rate.

We, the teachers, are prepared to contribute a sufficient amount to pay for the plan benefits. However, we are not prepared to pay more than is our share.

Because the government has accepted its responsibility for the unfunded liability in the adjustment fund, we believe that, once the two separate valuations are done, it will be proven that there are sufficient funds available to pay for our minimum benefit improvements from the surplus of the main fund, a surplus that presently exists, and that such future costs to pay for these expenses will come from the projected one per cent contribution rate increase.

Ensuring the integrity of the financial arrangements for the funding of the teachers' pension plan is critical to any long-term relationship between government and teachers, especially as partners. The plan and the proposed schedule 2 sections must specifically prohibit the use of any future gains against the pre-1990 deficit, the deficit for which the government is assuming responsibility.

Only a specific prohibition in the schedule will ensure that future governments will honour the commitment made by the present Treasurer of Ontario. Therefore, I will be again alluding to the same references, on page 38, as Mr Archambault. Subsections 3(4a), (5) and (7) must be addressed. We are also submitting, on page 39, that subsections 4(1) and (2) must be amended to ensure that future costs of the plan can truly be a shared cost both by government and teachers on a 50-50 basis.

Ms Polowy: In conclusion, I would like to say that OTF is here today to indicate our preference for an equal partnership model of governance for the future management of our pension fund. In our submission we have suggested revisions to improve the viability of the partnership model, to extend fundamental protection to plan participants, to name the Ontario Teachers' Federation as the bargaining agent for plan participants, to alter benefit structures to improve equity and to ensure that arrangements for the identification and funding of the unfunded liability for service prior to January 1990 require that it be paid in full.

Suggestions for additional amendments are contained in appendices I and J of this submission. We hope for an opportunity to review them with you and to work closely during the clause-by-clause study. If government is prepared to enter into an agreement that permits the federation to function as an equal, we believe the amendments we have proposed will facilitate a partnership that will work in the best interests of all involved.

Our final recommendation is on page 41. We ask that the standing committee on social development recommend that the government of Ontario enter into an agreement with the Ontario Teachers' Federation for the future governance of the teachers' pension plan which provides: for equal sharing of all risks, rewards and responsibilities; joint sponsorship; the negotiation of future changes to the teachers' pension plan, and a mechanism for the resolution of disputes between the partners.

We have prepared for questions if there are any.

The Chair: I am sure they will have questions. They do.

Mr Allen: First of all, I thank the Ontario Teachers' Federation for a very thorough presentation which is not out of character with other presentations I have heard from the same body.

Second, I apologize to them that our Education critic is, for health reasons, unfortunately unable to be involved in this stage of the hearings but may be back for the clause-by-clause work later. In the meantime, Mr Morin-Strom and I will be sharing this particular responsibility.

My question may arise somewhat from my own lesser immersion in the subject. You have outlined, broadly speaking, your approach and the amendments that you wish. Could you share with us, in general terms, where the principal flashpoints are with respect to your negotiations with government and where you are having the most difficulty in dealing with the government with respect to the package of materials you have just given to us?

Ms Polowy: The issue is probably rather clearly emphasized by us in that we do not believe that we can function as an equal in any partnership arrangement with the government without having included in the government's model a mechanism for resolving disputes, for bringing to finality any issue where we might find differing opinions, particularly with respect to the contribution rate, to the benefit level and to the structure of the fund.

1710

Mr Reycraft: I have a number of questions. I recognize others may want to participate as well, so I will graciously accept being cut off whenever you think I have had enough time.

The Chair: I will use my judgement.

Mr Reycraft: First of all, I have a couple of questions about the unfunded liability. I sensed perhaps a slight difference between what I have understood up to this point and what I heard you say today. It is my understanding that the government had agreed to accept responsibility for the unfunded liability in the merged funds, the two funds when they were merged. I sense from something that was said in the brief, and I cannot put my finger on it right at the moment, that it was your interpretation that the government had accepted responsibility for the unfunded liability in the adjustment fund alone. Can you help me out?

Mr Archambault: We believe that the government took responsibility to pay for the unfunded liability in the adjustment fund, because in discussions we also talked about surplus in the main fund and how we could use the surplus. We have based all our discussions, our demands on benefits, on new benefits, on at least a portion of the surplus. In our discussions we believed that the part which needed fixing was the unfunded liability on the adjustment fund.

Mr Reycraft: The Superannuation Adjustment Benefits Act did not intend that the adjustment fund would be fully funded; it was set up to operate on a pay-as-you-go basis. Why then do you believe the government must accept the responsibility for the unfunded liability in that fund, taken separate and apart from the basic fund?

Mr Archambault: Because in the course of negotiations that was one of the proposals that hit the table. In the course of negotiations you make some proposals and one of the proposals was that the government would pay the unfunded liability.

Mr Reycraft: I have had a number of discussions with the Treasurer on this matter and it is my understanding from those discussions that it has always been his intent that the commitment he made on behalf of the government was to fund the unfunded liability in the merged funds, not the adjustment fund alone.

Mr Head: If you do a valuation on a merged fund you get quite a different answer from when you do two separate valuations and then a valuation on the merged fund. That is our concern. We own half of the surplus and that has to be taken into account.

Mr Reycraft: Why would you claim ownership of half of the surplus and not half of the deficit in the adjustment fund, then?

Mr Head: We do, but you have to look at how that is going to be valued.

Ms Polowy: I think what we are saying is that we will look, for the future, at sharing not only the surplus but also any deficits that may come forward, that the government has clearly recognized the fact that it is taking on the responsibility for the deficit and that we, as plan sponsor, agree that this is a good idea. We believe that we had agreed during negotiations or discussions to merging the funds for the future and that the basis of our discussions then went from that, a merger for the future.

Mr Reycraft: The government has indicated that the unfunded liability in the merged funds—

and I will move away from this argument—is \$4 billion. Does OTF agree with that valuation?

Ms Jones: I am going to attempt to answer the question. Because there are so many factors in any valuation, to try to establish exactly how much is owed depends on such volatility. Members from Treasury earlier talked about the problem in predicting what future costs would be. There was reference made to real rate of return of interest, salary assumptions as far as increases over inflation are concerned and also the inflationary factors.

When you value a fund, be it a separate fund or a merged fund, you are expecting actuaries to make those predictions over the lifetime of every plan member. That includes the person at age 22 who started teaching in September and may live to 103. That is a long time period. Whether we can ever agree on a dollar figure depends on whether we can agree on the basis of the economic assumptions.

Your question had two parts to it really. If we agreed with merging, and if we agreed that the government take the surplus from the main fund that we wanted used to buy benefits, then might we agree to the \$4 billion? That would depend on how we arrived at those economic assumptions. So it is a definite "maybe."

Mr Reycraft: I realize that there are many uncertainties in making that valuation, but making those valuations is the business that actuaries are in. To do it they have to operate on certain assumptions. What I want to know is if there is agreement between OTF and the government's actuaries on the assumptions, things like the real rate of return on the fund, rate of inflation, increases in salaries, all those things. Is there agreement between government and the OTF on the actuarial assumptions that have to be made in order to determine what the value or the liability of the fund is?

Ms Jones: Our position is simply this: As Mr Archambault mentioned, if we value the funds as of 31 December 1989 and agree to do the same actuarial evaluation for the new plan in the new world, as of 1 January 1990, as long as there is consistency within those valuations, there is not an issue. It is when actuaries manipulate their assumptions from year to year to favour a certain deficit or surplus that we feel extremely uncomfortable.

For example, at one point in March 1989 there appeared to be a surplus in the pension fund of \$1,885,000,000. It would be nice to know that those assumptions continued. However, as the markets change, the assumptions change. As

long as whatever is established as premerging is the same as post-merging a day later, as long as those assumptions are the same, the bill is clear. That is the issue that OTF wants addressed.

The Chair: Does anyone else have any questions now? We have about 10 minutes left and I know Mr Reycraft has some.

Mr Keyes: Yes. Mr Reycraft has others, but may I ask just one? Could Mr Head make further elaboration on the point he raised that some of the benefits they were seeking would be of no future cost to the fund. I did not quite understand that. Could you run it by me?

Mr Head: Yes. If you look at the two areas where we believe there are no future costs to the fund, the adjustment of the pension to the pre-1982 retirees by those amounts, you have to understand that originally those people had been feeding into the fund and, by an arbitrary date, they get the average of the best seven and the new groups get the average of the best five. Well, all of those contributions were prior to that. They were feeding into it, and so in terms of the actual costing of that, which we do have from Treasury, the future contribution rate is zero. It is a one-time, it is a—

1720

Mr Keyes: But there must be a distinct costing there of what it would cost the fund.

Mr Head: Yes, there is. If you take all of the costings of those four benefit changes we are asking for, it is a future contribution increase of 0.305. We have agreed to 0.4.

Mr Keyes: But there must be a dollar value for them there.

Mr Head: Yes, there is a dollar value.

Mr Keyes: Will you share that with us?

Mr Head: Yes, as you do I am sure, since it is from Treasury. It is \$1.285 million, which is a 0.305 increase per teacher.

Mr Head: If you look at the other area, the area of the 35 years of service, you can see that there is a windfall just because each year of the contribution you are staying longer in the fund. Therefore you are not drawing on it and you are paying into it. The averaging is so minimal that—that is a future cost—there is no future cost to the fund.

Mr Keyes: The point you are trying to make, and there is certainly a decided dollar cost, is that you are suggesting the amount for the teachers to pay is minimal. When you say 0.305 for all the rest of the teachers, that is what you are suggesting.

Mr Head: That is correct. You are talking about compounded moneys and 117,000 contributors.

Mr Keyes: I was just wondering if you had a little further explanation. You talked about, or someone did—I am sorry; I apologize to the person—modified sponsorship in your option. I wonder if you just could elaborate again a bit on that one. I am trying to find a page in this.

Ms Polowy: Yes, I believe it is in the partnership area, and it is amendments to section 25a. It is in the back section of our brief and you will find it on page 118. That is in section J, the draft language that we saw for section 25a, which was a proposal by government to look at how advances would be made by the minister to pay down any sudden rise in contribution rates that would occur because of volatility of the market.

We have addressed some amendments to that section on page 118 in our brief. We believe that we have made some minor adjustments, but it is possible that the section 25a that we have here and that we were working from is not the same proposed amendment that you will be considering. I can only say that our draft language was to address what we thought was going to be looked at. There were actually quite minimal changes that we were looking at, simply a way in which we would pay back the Treasurer for advances made, but we would pay back only our share of the advances that had been made.

Mr Keyes: The major difference, as I look there on the page, would simply have been in the formula, where the government amendment formula was A minus B and yours is A minus B over two.

Ms Polowy: So we pay half.

Mr Keyes: Half of that one is what you are looking at with that.

The Chair: Are there any other persons who would like to ask a question, or would you like me to go back to Mr Reycraft for that last five minutes? Looks like you have it, Mr Reycraft.

Mr Reycraft: I want to understand your concern about the partnership model that is proposed in the bill. What is it that the government will be able to do unilaterally and arbitrarily under that model that concerns you?

Ms Polowy: A number of the issues that we have raised throughout deal with the financing or funding of the fund for the future. We believe that without the inclusion of a final dispute resolution mechanism, we do not have the ability to function as an equal partner within this partnership arrangement.

A number of the amendments that we have addressed are simply to have the Ontario Teachers' Federation recognized in the legislation as the partner. In an area where it says "amendments of the plan will be done by the Lieutenant Governor in Council," we have asked to have included "amendments to the plan will be done by the Lieutenant Governor in Council and the Ontario Teachers' Federation" so that there will be a collaboration once an agreement has been made for a change to the plan, that one party will not perhaps get to walk away and write the language and then we might find out that we do not particularly agree with all of the things that have been included.

Mr Reycraft: Can I stop you just there?

Ms Polowy: Yes.

Mr Reycraft: It is my understanding, though, that those changes that would be done by the Lieutenant Governor in Council would only be done on the recommendation of both teachers and government.

Ms Polowy: That is correct.

Mr Reycraft: If both parties have to agree to the changes before they go to cabinet, how is that an unequal partnership?

Ms Polowy: I think probably the area that I want to discuss more fully with you is an area where there is no agreement. When the parties cannot agree that there should be an increase in benefits, what happens to us then? If indeed, by the legislation, there is the ability of one party or another to simply say there is no agreement and so there will be no change, then we do not believe that is the basis for an equal partnership. We would like to see that one further step taken so that where we do disagree on an issue, an impartial third party can give us a ruling that will bind both parties.

Mr Reycraft: Do you not agree that with both parties, in effect, having a veto power over any changes that is equal?

Ms Polowy: This is Sue's favourite topic, so she would like to pick up on it.

The Chair: We have two or three minutes at the most.

Ms Jones: I promise I will be faster than that. I guess it comes from my understanding as a teacher. If I say to a student, "You cannot do that"—we can call ourselves partners if we wish; as long as I say no, the action cannot be performed.

If you and I are sitting across the table as government and teacher, and I have a great,

grandiose plan or you have a great, grandiose plan of how to deal with surplus, I can say no and you cannot touch it. You can say no and I cannot touch it. The double veto is a form of partnership that ensures a crippling of action. We would like the double veto, or the potential of either side vetoing, to be a catalyst for further action by an outside body, not a crippling of all action.

It is true that we have gained by this that at least we as representatives of the planned participants can also say no to government. However, it does not ensure that any action will occur, because the nos can keep on going. In actuality, as the Treasury person explained earlier, saying no ensures a contribution rate change. It never will allow any change to the plan, and that is one of the reasons why we are extremely concerned about our present surplus being taken, because we see that as our only opportunity to improve benefits. It is now or never again.

1730

The Chair: Thank you all very much. Mr Reycraft, your time is up.

Mr Reycraft: Can I have one more question?

Mr Jackson: Let him.

Mr Reycraft: It will be very brief.

The Chair: I think you have had enough questions. Do not forget that this group is coming back to summation.

I wanted to thank each of you. I think you have presented us certainly with your concerns and the way in which you hope they will be dealt with.

I would like to ask the forbearance of each person in the room at the moment because I have been having some requests from my committee members that going into the Ontario English Catholic Teachers' Association presentation is going to present some difficulties. People have commitments tonight, and apparently the weather is quite hazardous. So, if OECTA could come back and be first on Monday, 11 December, I would certainly find that would likely be more appreciated tonight.

If we did not have this vote, it would not be quite as difficult, but l'Association des enseignants et des enseignants franco-ontariens are going to have their presentation disturbed by a vote and I understand now from my clerk that it could be a 30-minute bell. As you see, we are talking after seven o'clock to finish with OECTA if all of that happens, and I feel that is asking too much of everyone in the room, to tell you the truth. I do not know whether you want to respond to that, but that is what I am suggesting.

I think some of you have this, and certainly my committee members have this other schedule. When the clerk got the word that it would be Wednesday evening—he had the hearings on Wednesday evening but somehow inadvertently in the clerk's office we forgot that we had a Tuesday afternoon, which we have by right. So I would like to ask all of those people who are on for the Wednesday evening to come on Tuesday afternoon. This is likely starting the Hamilton-Wentworth group, or that part of that. But because now we are going to have OECTA hopefully next Monday, the other two groups that would be affected would be Thunder Bay and Renfrew, which would come and be with us on Tuesday afternoon.

Now, does anyone want to respond to that complex scheduling?

Ms Lennon: As the president of OECTA, I would like to ask a question first, and that is, what time are we looking at on the 11th?

The Chair: We would like to start at 3:15.

Ms Lennon: I guess our option is that either we can present on the 11th to a committee or we can present at seven o'clock tonight with hardly anyone here. That is my understanding.

The Chair: If OTIP finds it easier to be here earlier, I do not mind fitting you in at the end of the day on Monday and, as you know, we are going into a night sitting.

Ms Lennon: How late would that be?

The Chair: We are going into a night sitting until nine o'clock. I mean, you can do whatever you want. I wanted to have the federations present before the regions, but that could still happen.

Ms Lennon: Yes.

The Chair: Ms Jones is often on the same plane I am, so I know she is the one who is going to have the most difficulty.

Ms Jones: If I may say, what I am trying to do is teach Monday.

The Chair: Yes. That would be a good idea, from what I understand. Anyway, would you mind being mixed in with the regions, or coming maybe and being the first at seven o'clock or 7:30?

Ms Lennon: If we could get together with your clerk later and work out the exact time as to the evening, that would be preferable. It would also help out my schedule if it was evenings, because I have a course that begins at 4:30 and goes for two hours.

The Chair: I will leave you with the clerk then.

Ms Lennon: But we would still get our half hour.

The Chair: Yes, you will still get the half hour, but as I say, I think it would not likely be as well spent tonight.

Okay, if I may have AEFO please. Those who need interpretation receivers, they are available to the left of the room. We likely will only get started on this issue. We are waiting for the call from upstairs.

If I could have co-operation, please, to leave the room unless you are willing to be quite attentive.

MM. Schryburt, Millaire et Denis, who will be presenting?

M. Millaire : Est-ce qu'on m'entend ?

The Chair: Yes.

ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS

M. Millaire : Je suis Robert Millaire, président de l'Association des enseignantes et des enseignants franco-ontariens. J'aimerais vous présenter, à ma droite, M. Jacques Schryburt, secrétaire général de notre association et M. Robert Denis, adjoint administratif de notre association.

L'Association est heureuse d'avoir l'occasion de soumettre au Parlement ontarien, par le biais d'une présentation au Comité permanent des affaires sociales, ses commentaires.

M. Grandmaitre : Est-ce qu'on a une copie de ça ?

Mme la Présidente : Oui.

M. Grandmaitre : Quelle page ?

M. Millaire : A la page 2, au début.

Comme je le disais, l'Association est heureuse de soumettre ses commentaires et ses recommandations sur le projet de loi 66.

L'AEFO est une filiale de la Fédération des enseignantes et des enseignants de l'Ontario et elle comprend les 6400 enseignantes et enseignants qui enseignent en français. Les membres de l'AEFO réalisent les programmes d'éducation dans les écoles et les classes de langue française établies selon la partie XI de la Loi sur l'éducation. Les membres de l'AEFO oeuvrent aux niveaux élémentaire et secondaire, aux niveaux public et catholique et dans deux conseils de langue française en Ontario.

Les membres de la profession enseignante versent une bonne partie de leur revenu à leur régime de retraite. Il est donc normal qu'ils

participent pleinement à la gestion du régime et à toutes les décisions qui affectent leur taux de contribution et les prestations qu'ils recevront éventuellement. En tant que filiale de la FEO, l'AEFO appuie intégralement la position de la FEO.

1740

A la page 3, Résolution d'impasse : Dans son rapport au trésorier de l'Ontario (M. Nixon), intitulé *A Fresh Start*, David Slater propose un régime de retraite administré indépendamment dont il indique les deux parties, ou deux partenaires : il s'agirait du gouvernement et de la FEO qui, tous les deux, nommeraient des idéicommissaires qui administreraient les régimes selon l'entente intervenue entre les parties et selon la législation et les règlements.

Ce modèle contraste énormément avec ce qui est proposé présentement dans le projet de loi 66. Dans ce projet de loi, le gouvernement a mainmise sur le régime. Aucune modification n'est possible sans que le gouvernement décide d'apporter des amendements à la loi ou au règlement à un moment qui lui convient. Le contrôle est entièrement entre les mains du gouvernement. Par contre, le Trésorier a déclaré en septembre 1988 que, dans le passé, le gouvernement avait agi de façon paternaliste avec le régime de retraite des enseignants, et que la question de partenaires semblait être intéressante.

La FEO est également intéressée à s'associer de la même façon.

A l'automne 1988, les enseignantes et les enseignants ont entamé de bonne foi des négociations avec le gouvernement. En peu de temps, les parties se sont entendues sur des principes importants.

Je continue à la page 4. Les parties, soit le gouvernement et la FEO, en tant que partenaires égaux, établiraient le niveau des bénéfices, des contributions et les hypothèses actuarielles. Les fidéicommissaires seraient responsables de l'administration du régime et des actifs du fonds, et feraient des recommandations aux parties quant au niveau des bénéfices et des contributions. Ce modèle ressemblait de très près à celui proposé par M. Slater.

La négociation, par contre, a abruptement cessé. Elle a été rompue lorsque le gouvernement a refusé toute forme de mécanisme de résolution d'impasse entre les deux parties.

Le projet de loi, tel qu'adopté en deuxième lecture, rejette le concept de partenaires égaux. À l'article 10 de la loi, si les parties ne peuvent s'entendre sur les taux de contributions et sur les

bénéfices nouveaux, un processus de médiation est prévu. Cependant, la médiation ne mène pas à une résolution finale des articles en litige. Le gouvernement refuse toute forme de mécanisme définitif de résolution d'impasse, telle que l'arbitrage.

L'arbitrage est nécessaire pour atteindre le statut de partenaires égaux. Sans l'arbitrage, un partenaire maintient le droit de veto sur l'autre et dans le cas du gouvernement, il maintient son pouvoir législatif pour imposer sa volonté. Un mécanisme de résolution d'impasse établirait une relation saine entre les deux parties. Chacune aurait la responsabilité de justifier sa position devant une tierce partie qui serait neutre.

Je me retrouve à la fin de la page 5. En refusant d'accepter un processus de résolution d'impasse, le gouvernement veut maintenir le contrôle et perpétuer l'attitude paternaliste qui existe présentement et qui avait été énoncée une heure auparavant. Il rejette, dans les faits, le concept de partenaires égaux.

Nous avons donc une recommandation à cet effet, la recommandation 1 : Que l'arbitrage soit ajouté à l'article 10 de la Loi.

Je continue, à la page 6, avec les deux autres options du gouvernement : En plus du concept de partenaires, le gouvernement propose ces deux options suivantes, dont la première est le contrôle par le gouvernement.

Le contrôle par le gouvernement, tel que décrit à l'article 9, est encore plus paternaliste que la loi telle qu'elle existe présentement. Les pouvoirs sont excessifs. Le lieutenant-gouverneur en conseil peut déterminer les contributions, rescinder le régime en vigueur, le remplacer par un autre et réduire les bénéfices. Nous sommes totalement contre cette option.

L'autre option est le contrôle par les enseignantes et les enseignants. Cette option semble offrir des aspects positifs pour l'avenir mais, encore une fois, le processus proposé pour modifier le régime de retraite demeure sujet à l'approbation du Cabinet. Jamais la FEO ni ses filiales, y compris l'AEFO, n'accepteraient une entente qui attribuerait tous les risques aux enseignantes et aux enseignants alors que le gouvernement pourrait s'accaparer des surplus que pourrait accumuler le fonds.

L'absence d'un processus de résolution d'impasse entre les parties assure que le gouvernement maintient son contrôle, peu importe les possibilités offertes.

À la page 7, Les garants : Selon la Loi de 1983 sur le régime de retraite des enseignants, le gouvernement est le garant du régime. Si une

évaluation du fonds révèle un déficit, le gouvernement de l'Ontario est tenu d'amortir la dette par des versements spéciaux. C'est aussi une exigence de la loi Pension Benefits Act de 1987, Loi de 1987 sur les régimes de retraite.

Aujourd'hui, les enseignantes et les enseignants sont prêts à accepter un partage et à partager cette responsabilité avec le gouvernement dans une entente entre de vrais partenaires égaux. C'est une concession majeure.

Si la FEO et le gouvernement étaient des partenaires égaux, l'AEFO propose ce qui suit pour faire face à l'éventualité d'un déficit :

Qu'une caisse de réserve soit établie pour accumuler des surplus ; que tout déficit éventuel soit comblé à partir de la caisse de réserve ; que le gouvernement prête les sommes d'argent requises pour amortir le déficit s'il y a insuffisance dans la caisse de réserve ; que, si un déficit persiste dans les évaluations subséquentes, les contributions soient augmentées ; que les surplus accumulés suite à des rajustements servent à rembourser les prêts du gouvernement avec intérêts.

Dans une entente entre de vrais partenaires égaux, le gouvernement pourrait se défaire du titre de garant unique des fonds, du titre de garant des bénéficiaires et s'assurer de l'engagement des enseignantes et des enseignants de l'Ontario dans le régime de retraite.

A la page 8, Bénéfices : Des études actuarielles du régime de retraite ont démontré clairement qu'une augmentation des contributions au fonds de rajustement s'avérerait nécessaire afin de garantir l'indexation des pensions. L'AEFO et la FEO étaient très préoccupées par les coûts lorsqu'elles ont déposé leurs dernières requêtes sur les bénéfices. Elles ont donc présenté un ensemble de propositions dont le coût serait raisonnable, selon les prévisions du gouvernement.

Parmi les bénéficiaires, qui ont été mentionnés tantôt par la FEO, on recherche la possibilité de se retirer après 35 ans de service, peu importe l'âge de la personne. L'AEFO croit qu'une personne qui a contribué à un régime de retraite pendant 35 ans a rempli ses obligations financières et devrait pouvoir prendre sa retraite sans pénalité.

A la page 9 nous avons la recommandation 2 : Que le projet de loi 66 soit modifié pour permettre à une enseignante ou à un enseignant de recevoir une pension après 35 années de service, peu importe son âge.

Un autre bénéfice est de pouvoir, à 60 ans, se retirer, si on a au moins dix années de service

dans l'enseignement. On a également donné des détails tantôt de ce bénéfice. Nous avons, aussi à la page 9, la recommandation 3 : Que le projet de loi 66 soit modifié pour permettre à une enseignante et à un enseignant de recevoir une pension sans réduction si cette personne a 60 ans et au moins dix années de service.

A la page 10, Facteur de réduction : Voilà un autre bénéfice. Dans la retraite anticipée, le régime prévoit deux moments où une personne peut prendre sa retraite : à l'âge de 65 ans, ou lorsqu'elle a accumulé 90 points en additionnant son âge et les années de service. La réduction, pour une retraite anticipée, est calculée selon le plus favorable des deux.

La réduction basée sur l'âge est de cinq pour cent pour chaque année en deçà de 65 ans, et les actuaire nous informent que cette réduction est juste et équitable. La réduction basée sur l'âge et le service est tout à fait injuste ; elle est de cinq pour cent par point en deçà de 90.

Une enseignante ou un enseignant qui a 55 ans et qui enseigne depuis 33 années a un total de 88 points, et deux points de pénalité, soit une réduction de dix pour cent, qui est deux fois le montant accepté ou recommandé par les actuaire.

Nous avons donc une recommandation à cet effet, la recommandation 4 : Que le projet de loi 66 soit modifié afin que le facteur de réduction d'une pension soit calculé selon le plus favorable de : soit, le facteur 90 moins l'âge plus service, fois 2,5 pour cent ; ou, 60 années de service moins l'âge fois cinq pour cent.

Je continue à la page 11, avec Pensions pré-juin 1982 : Nous aussi trouvons, afin de corriger l'injustice qui existe présentement entre les personnes qui ont pris leur retraite, ou avant le 1^{er} juin 1982 ou après le 1^{er} juin 1982, qu'il faut essayer de rétablir ou de corriger l'injustice créée par différentes possibilités.

Nous avons donc la recommandation 5 : Que le projet de loi 66 soit modifié, afin que les pensions payables avant le 1^{er} juin 1982 soient augmentées de 1000 \$, et que les pensions, de personnes à charge, payables avant le 1^{er} juin 1982 soient augmentées de 500 \$ dès l'entrée en vigueur de cette nouvelle loi.

A la page 12, Hypothèses actuarielles : Il y a beaucoup de facteurs qui entrent dans les hypothèses actuarielles. Il y a, par contre, trois hypothèses qui sont les plus importantes : les taux d'inflation, les taux d'augmentations salariales et les taux d'intérêt de placement.

Le gouvernement et la FEO s'entendent sur deux de ces hypothèses. Il s'agit du taux

d'inflation, qui est à 4,5 pour cent, et du taux d'augmentation de salaire, qui se situe à un pour cent de plus que l'inflation. Le désaccord repose sur le taux de rendement des investissements. L'AEFO croit qu'une politique d'investissement « modest risk – modest reward » pourrait produire un taux d'intérêt réel sur les investissements et se chiffrerait de 3,5 pour cent jusqu'à quatre pour cent. Vous retrouvez ceci à la page 13.

The Chair: M. Millaire, I guess we will have to go now. You have had 20 minutes, so you will have 10 minutes. I hope you will sum up in five and give us five for questions. We should be back within about 15 minutes.

Mr Millaire: Do we have to go out and come back?

The Chair: We have to go and vote.

The committee recessed at 1753.

1800

The Chair: We can commence, now that Mr Grandmaître has arrived. Page 13?

M. Millaire: Je préfère reprendre à la page 12.

Mme la Présidente : A la page 12, oui. Just for everybody in the committee, I have asked Mr Millaire to confine his remarks to five minutes if possible, because we have only 10 minutes left in this presentation. So we hope to finish at 6:15, folks.

M. Millaire: En bas de la page 12 des Hypothèses actuarielles: Juste pour reprendre très brièvement, l'AEFO croit qu'une politique d'investissement « modest risk – modest reward » pourrait produire un taux d'intérêt réel sur les investissements se chiffrant de 3,5 pour cent à quatre pour cent.

Sans reprendre la tableau que nous avons à la page 13, je vais aller directement à la page 14, à l'avant-dernier paragraphe. Depuis 1983, le taux réel d'intérêt n'a jamais été inférieur à 4,25 pour cent. Alors, nous faisons la recommandation que vous retrouvez au bas de la page, la recommandation 6: Que, lors des prochaines évaluations du régime, on utilise l'hypothèse d'un taux de remboursement réel qui se situerait entre 3,75 pour cent et 3,85 pour cent.

A la page 15, Evaluation initiale: Notre position, pour résumer brièvement, au bas de la page 15 est celle-ci. L'AEFO croit que, avant d'établir une nouvelle entente de partenaires, le gouvernement devrait procéder à deux évaluations actuarielles distinctes: l'une pour le fonds de retraite et l'autre pour le fonds de rajustement. Les surplus du fonds de retraite devraient pouvoir

servir à améliorer les bénéfices et le déficit du fonds de rajustement devrait être comblé par le gouvernement. Cela réglerait les problèmes du passé. Pour l'avenir, les deux fonds seraient consolidés et tout surplus et déficit seraient partagés de façon égale.

Nous avons deux recommandations à la page 16: Que le projet de loi 66 soit modifié pour prévoir deux évaluations distinctes: une pour le fonds de pension et une pour le fonds de rajustement; et, que le projet de loi 66 soit modifié afin que le gouvernement comble le déficit du fonds de rajustement.

En guise de conclusion, à la page 17: En terminant, l'Association désire rappeler aux membres du comité que les dispositions de la Loi 8 de 1986 sur les services en français en Ontario doivent assurer aux francophones l'accès à des services en français par le régime de retraite des enseignantes et des enseignants. Une façon de garantir l'accès aux services en français serait d'assurer aux francophones une représentation aux plus hauts échelons de la structure qui gèrera le régime de retraite des enseignantes et des enseignants.

Je vous remercie beaucoup de votre attention et je vous remercie d'avoir écouté nos commentaires, nos préoccupations et nos recommandations. Nous sommes prêts pour vos questions.

M. Grandmaître : Monsieur Millaire, vraiment, si on lit vos recommandations, elles ne diffèrent pas tellement des autres. J'allais employer le mot « complot », mais on va oublier...

M. Millaire : Front commun.

M. Grandmaître : Front commun. Je crois que ça fait un peu plus de trois heures qu'on entend à peu près les mêmes recommandations. Je suis sûr que les mêmes questions qu'on pourrait poser ont déjà été posées aux gens qui ont fait des présentations avant vous.

J'aurais une seule question, et c'est sur le concept de partenaires – on va l'appeler le partage, si vous voulez – que vous attendez du gouvernement. Je crois que le gouvernement, depuis un certain nombre de mois, plie; vous l'avez fait, tout le monde l'a fait. Maintenant tout le monde est à la recherche d'un dénominateur commun et il semble que nous en sommes très près. Par contre, l'arbitrage, on y tient mordicus, si je peux employer le mot « mordicus » pour tout le monde. Est-ce que je résume assez brièvement?

M. Millaire : Si on est rendu près comme ça, c'est très intéressant.

M. Grandmaître : Très intéressant. Alors, parlez-moi du partage, du modèle. Je crois que

vous faites référence au partage à la page 12. Est-ce que c'est à la page 12 que vous en parlez ?

M. Millaire : La recommandation sur l'arbitrage à la page 5 ?

M. Grandmaitre : A la page 5, oui. J'ai souligné le mot « paternaliste », qui me saute toujours aux yeux. Je crois que le gouvernement a voulu changer cette attitude-là mais, par contre, vous répétez à peu près les mêmes choses. Vous voyez, vous ne pensez pas que le gouvernement est sincère; oui, on peut employer le mot « sincère ». Est-ce qu'il y a un manque de sincérité, à vos yeux, vis-à-vis du gouvernement, dans ces négociations ?

1810

M. Millaire : Bon, disons que c'est l'impression qu'on nous a laissée et surtout, que c'est là où les négociations ont été rompues. Alors, c'est lorsqu'on était rendu à ce point-là que ça a été rompu. Cela nous laisse avec l'impression que le gouvernement ne veut pas aller jusqu'au bout dans cette entente de partenaires égaux. Je ne faisais pas partie de ceux qui négociaient avec le gouvernement, mais c'est l'impression qu'on a et qui nous est laissée.

C'est là peut-être où est la méfiance. Tous les documents des membres de la FEO qui ont fait des présentations parlent de cette méfiance qu'il y a face au gouvernement. C'est justement cet item qui nous inquiète beaucoup et qui inquiète beaucoup les enseignantes et les enseignants partout dans la province. C'est quelque chose qui est très simple à comprendre, le fait que le gouvernement ne veut pas aller jusqu'au bout et qu'il veut garder un certain contrôle. Alors, ils nous poussent pour essayer d'arriver à une entente, parce qu'ils ont peur de ce qui pourrait arriver. Peut-être qu'il n'arrivera rien, mais il y a des possibilités que le gouvernement puisse abuser de ce contrôle.

M. Grandmaitre : Souvent c'est le contraire. C'est le contraire avec moi mais, par contre, peut-être que ma décision ou mes commentaires sont préjugés. J'ai grandement confiance en le gouvernement et surtout en l'approche du Trésorier dès le début. Je crois que le Trésorier a été très ouvert. Il a même fait face à une dizaine de mille ou à une vingtaine de mille de personnes. Plus il y en avait, plus M. Nixon aimait ça parce qu'il était convaincu que la solution ou la formule, le modèle qu'il offrait était le meilleur modèle et la meilleure solution. Alors moi je suis convaincu que M. Nixon ne changera pas d'idée, si vous voulez. Il est plein de sincérité et vous

devriez faire confiance à M. Nixon et au gouvernement.

M. Allen : C'est un plaisir d'avoir votre mémoire à ce sujet. Je veux exprimer notre appui de la perspective générale de votre présentation et aussi, que nous sommes d'accord concernant la plupart, je pense, et peut-être toutes les questions spécifiques dans le mémoire. Mais je voudrais vous demander si toutes ces questions sont d'importance égale ou s'il y a certaines qui sont plus importantes que d'autres, ou quoi ?

M. Millaire : Il s'agit certainement d'un processus de négociation en ce moment. Je ne vais pas commencer à négocier autour de la table. Il y a peut-être du chemin à faire sur une question ou sur une autre, mais maintenant ça devrait être aux représentants de la FEO qui ont à négocier avec le gouvernement de continuer.

M. Denis : C'est l'arbitrage.

M. Millaire : La priorité qu'on vient de mentionner, de répéter, c'est l'arbitrage. Cette question est très importante. Je suis conscient qu'on nous demande de faire confiance à M. Nixon. M. Nixon est très préoccupé par l'aspect financier. On est conscient de l'aspect financier mais notre préoccupation est de l'autre côté, alors on a une certaine crainte du pouvoir, du contrôle que veut exercer le gouvernement sur nos pensions et nos rentes.

The Chair : Any other questions? It looks like we have met our time line. I have not had a chance, Mr Millaire, and I would like to say I was very pleased to receive recognition from your association earlier this year for my work on Bill 109. I must say to you, as an anglophone and with a very limited vocabulary in français, that that moved me deeply.

As an Ottawa-Carleton caucus, we have met with the new French-language school board. All of its sectors and the general board and things look quite optimistic. There are still snags, and we expected that, but it certainly is a great joy for us in Ottawa-Carleton to see that pioneer effort working out as well as it is.

M. Millaire : Je vous félicite encore une fois et je vous remercie de vos commentaires.

The Chair : This committee then will adjourn until 3:30 on Monday. I just would like to inform the committee members that the Ontario English Catholic Teachers' Association has chosen eight o'clock on Monday evening for its presentation time. Everything else will remain the same, but we will meet until 9:30 instead of 9:00 on Monday evening. Thank you all very much for your co-operation.

The committee adjourned, at 1816.

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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Teachers' Pension Act, 1989

Loi de 1989 sur le régime de retraite des enseignants

Second Session, 34th Parliament

Monday 11 December 1989



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 11 December 1989

The committee met at 1530 in room 151.

TEACHERS' PENSION ACT, 1989 (continued)

LOI DE 1989 SUR LE RÉGIME DE RETRAITE DES ENSEIGNANTS (suite)

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

The Chair: I would like to call to order the standing committee on social development. We are in the process of hearings on Bill 66, and the first presenters today are the Superannuated Teachers of Ontario, Ms Pilon and Mr Causley. Would you please come forward.

As you know my reputation, I am going to stay as close to the time as possible. We are in session from now until 9:30 and I want to finish around 9:30 tonight, so I would ask you if you can to present in the 20 minutes you have and give us 10 minutes for questions. Would you please begin.

SUPERANNUATED TEACHERS OF ONTARIO

Ms Pilon: I thank you for the opportunity that you have given me to follow up on our written brief regarding the STO position on the Teachers' Pension Act, 1989. In our written brief we have, on page 1, given a summary of the position which we have taken on Bill 66. Since our members have retired and are in receipt of pensions under the Teachers' Superannuation Act, we are in a slightly different position than the active teachers.

Despite the fact that we are retired, we continue to have care and concern about the future of this plan. We support the new direction that has been agreed upon by the Ontario Teachers' Federation and the government. We understand the reasons behind the decision to amalgamate the basic fund and the adjustment fund and to make certain that the benefits promised under the legislation are funded. We also agree with the decision to place surplus funds on the open market. The prudent management of an investment policy can be of immense benefit to the financial security of the plan.

The STO is of the opinion that a way must be found to enable the Ontario government and the OTF to enter into an equal partnership in the management and sponsorship of the new pension plan. This approach was recommended by the studies made by Coward, Rowan and Slater and should be attainable with goodwill on both sides. The main impediment to such a solution would appear to be some finality to the resolution of disputes between the two partners.

The Chair: I think some people are having difficulty. This is the brief. We had it previously presented to us. It was not distributed today, so if this is what you are looking for at the present time—I presume there might be a couple of extras. These were presented to help us; they were given to us last week late in the week. Is everybody able now to focus in?

Are there any more extra copies? I am very sorry. There are advantages and disadvantages to being first on the agenda.

Ms Pilon: Thank you, no problem. The main impediment to such a solution would appear to be some finality to the resolution of disputes between the two partners. Without partnership, there cannot be true negotiation of benefits. The government of Ontario proposes to accept responsibility for the debt which results as a consequence of the amalgamation of the two plans. In the assessment of this liability, one must consult actuaries. This involves looking into the future in an attempt to visualize what may happen to the fund over a period of 50 to 60 years.

1540

There are a number of factors which must be considered by an actuary in determining the size of the problem. The main factors, however, are the interest rate which will apply over the period, the effect of inflation during the years in question and the salaries to be paid to teachers in that time. Despite the enormity of the problem, an estimate can be reached to arrive at the reasonable conclusion of the liabilities of the fund. In looking at the future of the plan, the government, with the aid of its actuaries, has determined that to provide for the ongoing stability of the fund, the contribution rate for active teachers must be raised by a full one per cent and matched by the

government. The increase in contribution would not, of course, affect the retired teacher directly. However, the value placed on the factors which determine the interest rate will fluctuate as time goes on.

It is our contention that a full one per cent increase is not justified at this time. An increase is advisable, but we support the OTF position that one per cent is too high and that a reasonable increase can be reached knowing that it can be increased or decreased in the future as may be required under future evaluations.

This brings us to changes which we, as retired teachers, feel should be a part of the new act. Originally, we asked that all pensions which were effective prior to 1 January 1982 be recalculated on the basis of the average of the best five years. This is the basis for the calculation of pensions since that date. We realize that this could be a lengthy and complicated calculation. We also realize that this is a shrinking rather than expanding route, and as a result we have changed our request to one which is easily implemented and which, quite frankly, would be of more benefit to our older retired teachers. Justification for this adjustment is found on pages 3 and 4 of the brief.

There has always been controversy as to whether or not a retired teacher should be permitted to return to teaching. Indeed, our members do not see it as black or white. The consensus seems to be that where there is a need for substitute teaching; our members are best qualified to fill the need. The present proposal of 95 days is adequate, but it is felt that the three-year limit is not a reasonable one. While there is the need, our members should be able to fill that need. This is the reason why we ask that the three-year restriction be removed.

In the future, the 95 days can be adjusted as supply and demand fluctuate. Persons who retired after 31 August 1984 were given an option to have their pension reduced so that it might be continued at 55, 60, 65, 70 or 75 to a surviving spouse. This option was not given to persons who retired before that date. Because of the reduction in pension paid to the retired teacher, the provision of this option for a spousal allowance greater than 50 per cent is a low-cost item. It is requested that for a limited time the retired teachers be given an option to select a reduced pension to be paid at a greater rate to the spouse.

In the past, the retired teachers have had no voice in the decisions made by the Teachers' Superannuation Commission. Since many of these decisions directly affect the pension of the

retired teacher, we feel that we should have a representative on the judicial body which is set up to continue the work of the commission. The Pension Benefits Act, while not mandating such a step, does indicate in section 8 the fact that the inclusion of a representative of those in receipt of pensions is a good idea. We are concerned about the future of our pension plan. We are the end product of that plan and as such request that our requests be given your earnest consideration. We would be willing to answer questions concerning our presentation. Thank you.

Mr Keyes: Thank you very much as my representative and presenters here today, since I am a member of your organization. Some people have challenged me that I now have a conflict of interest, but I assure you we checked that out with the Conflict of Interest Commissioner and he said that is not the case, but it would apply equally to four of us in this group.

Mr Jackson: It is never a conflict when it is a smaller pension.

Mr Keyes: It is never a conflict when it relates to a large segment of people rather than one individual. I just wanted to see why you suggest that one per cent is too high, because the one per cent arrived at has been done as the result of actuarial evaluation of the fund. It is not that the government is seeking to put more money into this, because heaven knows there are many demands upon the dollars. We are saying from actuarial evaluation there is a need to fund it adequately, and therefore it is debatable between both sides whether it should be a 0.9 per cent increase or a 1.2 or somewhere in between. So one per cent is proposed in here, but that one per cent will, in all likelihood, if based on the same assumptions under which the actuaries evaluated the plan, at the moment probably not be sufficient. So why are we really even debating that one per cent is too high?

Ms Pilon: I would ask Mr Causley.

Mr Keyes: All right. We run back to the head of the fund for so many years.

Mr Causley: We feel that one per cent is too high for a number of reasons. Of course, the question of how much is an adequate contribution to the pension fund depends upon the assumptions that are made by the actuary in valuing the plan. It has been quite evident in the past few years that the contribution rate has been too high in the past. This has resulted in a surplus in the fund, changing over from a deficit to a surplus in the fund, and this resulted in the surplus being taken by the government at the time

of the surplus. We feel that if you had put in one per cent, and this has been agreed upon by the actuaries that we have consulted, this would result in a surplus in the future. If there is no agreement to have partnership in the fund, it is quite likely that this will happen again, that the surplus will be taken by the government in discharging its debts. We feel that if this is the case, it is much better to start off with something that is less than one per cent, and if it is necessary, it can be increased or indeed can be decreased if it is much too much in the future. Better to work on this proposition than to put in a whole one per cent increase without any benefits and without, as we recognize it, the need for this full increase.

Mr Keyes: May I just follow up with one other question, realizing the time for others. Mr Causley, you would have been the head of the superannuation fund at the time, in 1975 I believe, when they started the TSAF. Would you agree that the principle at that time under which it was established was a pay-as-you-go type of arrangement and that the deficit—the unfunded liability, I am corrected—that exists in that fund comes largely because we have not changed those contributions since 1975 when it was set up, for one thing? Second, we then included all pre-retirees to pre-1975 so that other factors have brought about that unfunded liability. I want to just merely clarify one other point after that.

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Mr Causley: There is no doubt about it that in 1975, when the superannuation adjustment fund was set up, it was designed on a partial pay-as-you-go basis and that it was recognized that the one per cent contributed by the teachers and the government was not sufficient to fund this benefit. It was also agreed at that time that this plan would be looked at within five years and that if an increase were necessary, it would be looked at at that time. But that look at the plan did not occur until something like 13 years after, when we had these three plans, three reports made by Coward, Rowan and Slater.

Mr Keyes: Having read the number of briefs that are going to be presented, the ones that are in my possession, I feel that many of them make a statement that is based on an invalid assumption. I wonder if you could clarify that. They seem to suggest that it is the government's responsibility to accept all of the deficit in the TSAF. Nowhere can I find in that legislation of 1975 and 1976 of the Superannuation Adjustment Benefits Act that that was so-and-so. It is an assumption, I believe, that many people have accepted which is rather

invalid and I think needs clarification publicly. Do you agree?

Mr Causley: There was nothing in the legislation to place the responsibility for either one, and indeed special permission was granted so that the superannuation adjustment fund did not have to be funded. It could be followed up on a pay-as-you-go basis.

Mr Keyes: I think that is a very crucial aspect that we have to keep in mind, so it is not, as so many briefs say, that government is obligated to pick it up. I think the clarification has to be that also in the merging of the two funds, reference was made to the fact that the government has taken away the surplus from the basic fund. I think the commitment of the government is to say, whatever past injustices, inequities may have existed, we are prepared to look at those based on actuarial findings. Merging the two funds together, we will take the \$5.8 billion deficit in TSAF, combined with the \$1.8 billion surplus in the basic and accept that responsibility for the \$4 billion that remains. So I do not think that we have, as a government, to be rightly accused of taking away the surplus without, on the balance side, saying we have agreed to accept a deficit or an unfunded liability which was not, legally, ours to assume.

The Chair: I would have a question of Mr Jackson, please. I think if you would hold your remarks, maybe you could fit them into answers to his questions.

Mr Jackson: I am just fascinated. When I ask a question like that, I am accused of directing the optics of the issue, but when he asks it, it somehow is clarification.

Mr Keyes: If you care to make the same observation, I will be glad to acknowledge.

Mr Jackson: I do not necessarily share the optics that you have.

The Chair: Mr Jackson, please.

Mr Jackson: I am just stretching for equal time.

The Chair: I see that.

Mr Jackson: My first question has to do with the degree to which the Superannuated Teachers of Ontario has been kept apprised by the government of each of the negotiated phases of this legislation since it was first announced over a year ago.

Mr Causley: I have been a part of the biannual review committee that has been negotiating, talking, whatever, with the government over the past three years, so I have kept the Superannuat-

ed Teachers of Ontario informed of the developments of these.

Mr Jackson: Very good. And of your eight recommendations for our consideration in section A of your summary, have those been shared with the government directly and can you comment as to which ones are meeting with approval or sympathy or support and which ones are not?

Mr Causley: Well, the first one, of course, is the one that is dearest to our hearts, the increase. This has been shared with the government and it has also been approved by the Ontario Teachers' Federation.

Second, we feel that this is something that is a simple way of handling a person when he returns to employment, that he then elects either to have the pension suspended or not. It makes it very simple for the commission to administer the plan from there on.

The 95 days, of course, is the suggestion by the government as to the appropriate number of days that a retired teacher may do in a school year, and we feel that this is quite satisfactory. There is no argument on that whatsoever.

The reduction in pension for any teaching over the specified number of 95, again, we feel there is nothing that we would argue with on this. This again is the proposal of the government.

The 95 days of teaching in the proposal that we have before us is that this would last only for three years and that at the end of three years, a person would not be able to do any teaching whatsoever without contributing to the fund and/or having the pension suspended, and we feel that three years is not a reasonable time. There is a need for supply teachers at this time. We feel it is going to continue for some time, so therefore it is not logical to say that at the end of three years you cannot do—in effect, you are saying you cannot do any more teaching.

We would rather have this open-ended but realizing that the 95 can be increased or decreased as the need for supply teachers occurs. This, to us, is a far more reasonable approach than to say, "Bing, you're cut off at a certain time."

On the matter of the election for actuarially reduced pension, this is available to everybody who retired from the fund from September 1984 but it was not given to people who retired before that date. The individual, in order to activate this, would have to take a reduction in pension for the teacher which would actuarially pay for the excess pension over the 50 that person selects. Since it is a no-cost item to the fund, we see no

reason why these people should not be given this option as well as the present retiring teachers.

Mr Jackson: Briefly, that was the one that intrigued me. Does that have OTF's approval? Support I should say; I should not say approval.

Mr Causley: Yes.

Mr Jackson: Very good.

Mr Morin-Strom: I would like to ask a question related to the first recommendation that most specifically affects the superannuated teachers in Ontario, and that is that those retirees prior to June 1982 receive an increase of \$1,000 to their pension plan to recognize the difficulty that older retired teachers are facing in terms of their income levels, particularly in comparison with where inflation has gone since then. I wonder if you could give us an indication as to what value that is, what the cost of the pension plan would in fact be and would that be the kind of item that the government would claim would bankrupt the plan?

Mr Causley: There have been estimates. They have ranged the gamut from low to high, but the estimate that the government supplied, the latest evaluation of this—and this information is as of December 1987—was \$123 million for this. Now, this of course would have to be less because in the two years that have passed some of our members have passed on and everyone has aged two years so that you have two years less to pay, even those who are surviving. So the cost would have to be substantially less than this amount.

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Mr Morin-Strom: So that would seem to indicate that would be something less than one per cent of the value of the fund, and the fund is some \$16 billion?

Mr Causley: Yes.

Mr Elliot: I would like to go back to the second-last response for a moment because I think that you went over the explanation of the "no cost to the fund" part of that a little bit quickly. This is the kind of thing that, in discussing this issue with my colleagues, caused a lot of problems because a lot of them really do not understand that this kind of thing does not cost the fund anything. When the person opts to do it by his volition, they go back and recalculate his pension and the pension is reduced in such a way that it is of no cost to the fund at all. I think it is very important that people realize that kind of option really does not cost the fund anything and it is at the option of the teacher who has put the money into the fund in the first place.

So I think when we who are used to talking about pensions all the time talk about that kind of situation, the part that is left out of the equation when you say it—I think you did that fairly quickly today—is that it is no cost to the fund because the pension is actually recalculated and reduced by a sufficient amount over the life of that pension. So the pensioner who makes the option actually is paying out of his pension for the increased benefit he theoretically accrues because of averaging over five instead of seven years. I wanted to highlight that a little bit more than you took time to do in your response.

Mr Causley: Thank you for doing my job.

The Chair: Thank you very much for your presentation.

May I now have the representatives of the Ontario Teachers Insurance Plan? If you would like to identify yourselves for the purposes of Hansard, I presume you have one spokesperson and the rest will be resource people.

ONTARIO TEACHERS INSURANCE PLAN

Mr Tisi: I am François Tisi. I am the chief executive officer of the Ontario Teachers Insurance Plan. To my right is Freddy Beacus. Freddy is our vice-chairperson. To Freddy's right is Doug Knott, a consultant for the Ontario Teachers Insurance Plan. To my left is Randy MacGlinn, an employee and consultant with the Ontario Teachers Insurance Plan.

The Ontario Teachers Insurance Plan, the Régime d'assurance des enseignantes et des enseignants de l'Ontario, is a nonprofit trust established in 1977 by the five teacher affiliate organizations of the Ontario Teachers' Federation.

The purpose of OTIP/RAEO is to provide the best insurance plans possible at competitive rates for active and retired educational employees, to ensure the best value for the insurance premium dollar. In 1989 OTIP/RAEO manages more than \$47 million on behalf of its members and provides long-term disability insurance to 46,500 elementary, secondary, public and separate, English and French schoolteachers in Ontario.

I would draw your attention to exhibit 1, on page 8, which shows that of the 117,000 members of the Ontario Teachers' Federation, OTIP/RAEO insures 40 per cent of those members—46,500—for long-term disability. In addition, OTIP provides home, automobile, life and retired employee insurance plans.

We welcome this opportunity to meet with the members of the standing committee on social

development and to share with you a number of concerns we have about the proposed Teachers Pension Act, 1989. In particular, we are concerned about teachers who are currently receiving disability benefits. On page 9, exhibit 2, you will see that according to statistics given to us by the Teachers' Superannuation Commission, the commission is presently receiving pension contributions on behalf of 1,200 long-term disability members. Of those 1,200, OTIP is responsible for, or we are here on behalf of, 550, 46 per cent of those who are presently contributing to the fund because of a disability. Additionally, we have concerns about the wording of several clauses impacting on future recipients of disability insurance benefits.

OTIP/RAEO is a long-term disability specialist. The purpose of LDTI is to provide disabled educational employees and their families with income while they recover from an accident or illness. In addition to a monthly income benefit, OTIP/RAEO protects the teacher's retirement pension by contributing a payment to the Teachers' Superannuation Commission while the teacher is unable to work due to disability. This contribution is based on salary at the time of disability.

Several aspects of the proposed legislation impact on this protection and we wish to address specific sections.

The first one is subsection 13(1), the definition of pensionable salary for an active member on long-term income protection. OTIP/RAEO is concerned that the pensionable salary defined in this section must permit escalation caused by a COLA or cost of living allowance in the LTIP policy, provided that escalation does not exceed the adjustment for inflation provision under section 79 of the proposed bill. OTIP/RAEO requests that legislation clearly state that such escalations are not prohibited.

Subsection 22(1), the payment of contributions: Currently the contributions to the teachers' superannuation fund for teachers on LTIP are remitted directly by the insurance carriers to the Teachers' Superannuation Commission, not to the school boards and then to the Teachers' Superannuation Commission.

It is the opinion of OTIP/RAEO that this practice should continue and not be replaced with a system which is unnecessarily complicated for the disabled teacher, requiring a remittance to the school board which in turn will remit to the Ontario Teachers' Pension Plan Board.

The Teachers' Superannuation Commission or the proposed Ontario Teachers' Pension Plan

Board could establish required reporting procedures for the insurance carriers. This would meet their needs and keep procedures simple for a disabled plan member. Long-term disability policies must be registered with the Teachers' Superannuation Commission. Compliance with set reporting procedures would easily form part of the registration compliance.

Subsection 20(1), the rate of contribution: In December 1989, as previously mentioned, the Teachers' Superannuation Commission indicated to OTIP/RAEO that contributions were being received from the insurance carriers on behalf of 1,200 active members. The rate of contribution for these members is established by the current act at 6.9 per cent. The new act proposed a contribution rate, after 31 December 1990, of 8.9 for disabled members. This will have the effect of reducing the monthly benefit received by the disabled teacher by approximately three per cent.

Most members receive a benefit of 66.9 per cent of their salary at the time they become disabled. If the contributions are increased by two per cent, this has the effect of reducing their purchasing power by three per cent. This is done simply by taking the two per cent over 66.9 which gives you a three per cent figure and therefore a three per cent reduction.

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It should be noted that the income received by the majority of the 1,200 disabled members is not indexed to the rate of inflation. This fixed income, which loses purchasing power monthly due to increased inflation, will be reduced. This, in our view, is a new hardship imposed on members who are already in a disadvantaged position.

If you turn to exhibit 3, I asked our people to prepare a list of individuals, without naming the individuals, to give us some statistics on LTD claimants who are receiving a monthly benefit of approximately \$1,000. You have 19 of them here.

When the individual was preparing this, she called me and said, "I have a real problem because I am trying to do this randomly but it seems that all of those who have low benefit amounts are women." My comment to her was, "Let's put them down exactly as they are," and you will see that out of the 19 there is only one man, one male.

I would like to take you through this. What it says is if you have individuals—I have given you the date of birth, the sex, the date of disability, the salary at time of disability. If we take the first one, it is \$26,346; the monthly LTD benefit,

\$1,016.53. The present contribution which is being made to the commission, at 6.9 per cent, is \$151.49. With the new proposed Bill 66, that \$151 would increase to \$195.40, therefore an increase of \$43.91. Where does that money come from? For present LTD claimants, it would have to come from their monthly benefit, therefore reducing \$1,016.53 to \$972.62. On page 11, the following page—

The Chair: Excuse me, sir. On this exhibit 3, is that a misprint or did you want to keep that as Bill 41? You have Bill 66?

Mr Tisi: No, that is definitely a misprint.

On exhibit 4, you have the salaries of the benefit level which is being remitted to the 550 long-term disability claimants we are responsible for. The statistics on the previous page obviously refer to the impact on lower benefit amounts, which are in the first and second column of exhibit 4.

The number of long-term disability claimants existing on 31 December 1989 will decline in the succeeding years. In exhibits 5 and 6, what we have done is we have tried to estimate the cost of our proposal with regards to a grandparent clause for LTD claimants as of 31 December 1989. Many will return to active employment. The financial implications to the pension fund of continuing the contribution rate of teachers receiving LTDI benefit before 1 January 1990 at the 6.9 rate is minimal when related to the entire fund.

OTIP/RAEO therefore proposes that clause 20(1)(a) be amended to read, "The amount of the required contribution for an active member on LTIP who was disabled before 1 January 1990 is 6.9 per cent of the member's pensionable salary."

Subsection 24(2), the source of funding of proposed 20(1)(a): We propose the new wording, in order to be consistent with our amended proposal 20(1)(a), be as follows, "The minister shall contribute an amount equal to four per cent, of which the current legislation has provision for two per cent, for long-term disability members who became disabled prior to 1 January 1990."

It is important to distinguish between the terms "disabled" and "on LTIP." If a plan member became disabled prior to 1 January 1990, then the contractual terms of the long-term disability contract of the insurer that would apply are those terms and conditions in effect at the time the member became disabled.

A member may not receive benefits for a long-term disability for several months thereafter, due to the LTIP waiting period outlined in

the insurance contract. Thus the importance of referring to the correct terminology.

OTIP/RAEO would like to thank the members of the committee for granting us an opportunity to bring forward our concerns on behalf of disabled members who are an important part of the family of Ontario's educational community. We take our responsibility seriously and trust you share our concerns for these unfortunate few.

Mr Keyes: Thank you very much for the brief on behalf of those who have all registered and a large number in OTIP of those who specifically require LTI benefits. Could you explain why the people who receive those benefits are only paying 6.9 per cent as opposed to the 7.9 paid by the rest of the teachers?

Mr Tisi: The decision was made in the previous bill. You referred to, in the previous presentation, the TSAF. Therefore, in the TSAF basically what is happening is that the one per cent is being contributed presently by the government for escalation purposes. When I referred to subsection 24(2), I said that, "The minister shall contribute an amount equal to four per cent," and I also added that the current legislation has provision for the two per cent, so basically the current legislation is remitting, on behalf of the LTIP members, the one per cent.

Mr Keyes: I just have not studied that particular aspect of it. It was my understanding that they had not been charged that but they had been paid the benefit or allowed the benefit of indexation ever since the beginning, so that the government has absorbed it. I will refer back to the legislation, which I do not have in front of me, the Superannuation Adjustment Benefits Act, to see that that is there. It was my understanding that it was not necessarily a part of the legislation but policy accepted by the government.

Mr Jackson: François, I remember meeting with you, I think it was late in September, with respect to your concerns about Bill 41, and there were about five or six we talked about at the time. You have now seen a new draft. Have any of your old concerns been dealt with in the change to this new bill and, if so, which ones in particular?

Mr Tisi: The one in particular that has been addressed, if we look at the new proposed Bill 66, is basically subsection 20(1), which now provides for a 12-month interim period where the contribution escalation to 8.9 does not have to be remitted on behalf of long-term income protection plan members in order to give the various

groups we represent the opportunity to negotiate the increase with the various carriers.

Basically, we are very pleased that change is in there. On the other hand, I believe there were a few other concerns we had. At this time, we do not want to underestimate the real concern we have for the present members who are on long-term disability, and therefore we have tried to highlight some of the concerns we believe must be addressed by this committee.

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Mr Jackson: This is a relative question which you may not wish to deal with, but I am concerned about the relationship with the new no-fault, no-tort auto insurance as it may relate to the concerns you have raised about the lack of inflation protection as the bill was currently configured. Could you comment about that, to put this in a little better perspective. Is this not the kind of LTD that kicks in to ensure the salaries if somebody is driving down the street and hits a teacher and it is not his fault. They do move towards this fund for income protection and then ultimately for pension protection.

Mr Tisi: Basically, if you are referring to the proposed Bill 68 on no-fault insurance, we have studied the proposed bill thoroughly. We have some real concerns with the bill in the area of accumulated sick leave, and more specifically in what you have just brought forward, the long-term disability which now becomes a first payer under the bill. The Ontario Teachers Insurance Plan will be making a presentation to the committee once that has been heard as we have—just as I believe all the affiliates in the Ontario Teachers' Federation have—real concerns with regards to how that is worded presently in the proposed Bill 68.

Mr Jackson: If I may just finish—obviously there was some flexibility expressed in the conversion from Bill 41 to this Bill—what was the resistance encountered with respect to your concerns, specifically in recommendation 1 which is section 13?

Mr Tisi: You are referring to any meetings we would have had with the government?

Mr Jackson: I am presuming you had some.

Mr Tisi: Unfortunately, we were not successful in meeting with representatives of the government.

Mr Jackson: So they did or did not occur?

Mr Tisi: They did not occur.

Mr Jackson: Did you request them to occur?

Mr Tisi: We forwarded a letter requesting a meeting; it did not occur. We then forwarded another letter and attached our brief with the second letter. Basically, that was the brief on the proposed Bill 41 at that time. Unfortunately, we were not able to have a meeting.

The Chair: Mr Tisi, when you say members of government, do you want to be more specific, Was it the Minister of Education?

Mr Tisi: We requested a meeting with Sean Conway.

The Chair: After the appointment on 2 August. So this has been in request since 2 August?

Mr Tisi: Yes.

The Chair: Thank you.

Mr Jackson: I have no further questions, but perhaps we could get a more specific response from the Ministry of Education with respect to the concerns raised in this brief, if any of the deputants before us have had occasion to present their case and interact with the government, to get a feel for their objections to certain recommendations. This group has not benefited from that and I certainly feel the committee should benefit from something more official from the government in terms of its concerns or its objection to what appears to be rather a reasonable request on the part of disabled teachers.

The Chair: Would any members representing the Ministry of Education like to comment on any of these?

Mr Jackson: Not necessarily during this time frame.

The Chair: Well, there are not a lot of free time slots in the next little while.

Mr Jackson: I think I made it clear in my request to the chair that this is a rather unique situation since we have established consultation with the groups that are coming before us. We have not established a rather direct form of consultation on Bill 66. I think that distinguishes this group from all the other groups that are before us. I do not think it is an unreasonable request. If we give the ministry time to prepare a five-minute presentation at some point, I would be more satisfied. I would like to hear from the ministry people who did not meet with them but who are aware of these requests, and not necessarily from the parliamentary assistant. I am prepared to give all sorts of time until we get that.

The Chair: Would you like to speak to that, Mr Keyes?

Mr Keyes: Yes, I will give two responses. I will be happy to ask ministry staff to provide some written response to the concerns that are raised. The second comment I would make is that I would like a little clarification from the group appearing before us. As I look at part III under "Contributions," I would have assumed that your major concern with regard to pensionable salary and the provisions is accounted for. I would refer you in the bill itself to schedule 1, part III, subsection 20(2), which says:

"(2) An active member on LTIP may elect to increase his or her required contribution by calculating it using an amount selected by the member that is,

"(a) not less than the member's pensionable salary; and

"(b) not greater than the amount of the member's pensionable salary after it is adjusted for inflation under section 79 as if it were a pension."

I feel that completely answers your concern. I wonder where it does not. That is what you are asking for.

Mr Tisi: Basically, our experience with a lot of long-term disability claimants is such that we realize that if you look at the legislation as it is proposed, they would have the opportunity to invoke section 75 of the escalation. The only problem we have is that if you look at long-term disability contracts as they exist today, if you look at the current practice today, the claimant receives a benefit—for the majority of them the benefit level is approximately 60 per cent—and there is 6.9 per cent which is sent to the Ontario Teachers Superannuation Commission.

If they have an escalation clause within the policy, within the long-term disability contract, then that escalation clause would trigger in annually. At that time, the insurance carriers would send the appropriate amount to the teachers superannuation commission on behalf of the claimant.

We looked the proposal and one of the real concerns we had was the fact that the contractual obligation from the insurance carrier could be 60 plus 6.9 plus an escalation, a COLA clause. If that were the case, then the COLA clause would be forwarded or the amount would be forwarded to the long-term disability claimant and then the claimant could opt to purchase or to look at section 79 and increase his pension.

The problem we have is we are dealing with 550 long-term disability claimants and some of

those individuals are not in a position to make that decision. If the moneys that are supplied by the insurance carrier, if instead of sending them directly to the commission the carrier sent it to the claimant, and then the claimant could make that option, we are worried that a lot of those claimants, because of the nature of their illness, would not be able, would not make that election and would not benefit from that COLA escalation as provided in section 79.

The Chair: The time on this presentation is quickly drawing to a close. Are there any final, very short questions? Thank you very much, Mr Tisi.

The Federation of Women Teachers' Associations of Ontario is next. I assume, Ms Penfold, you will making the presentation as usual, and I presume also that as usual there is much more written here than you will be presenting.

Ms Penfold: Yes.

The Chair: Perhaps you would like to begin and introduce the others who are with you.

FEDERATION OF WOMEN TEACHERS' ASSOCIATIONS OF ONTARIO

Ms Penfold: I am Helen Penfold, the president of the Federation of Women Teachers' Associations of Ontario and here today are our executive director, Joan Westcott, and our assistant, Joan Byrne.

As a very large organization of working women, FWTAO appreciates the chance to present the perspective of public elementary school women teachers about the problems we perceive in the proposed revision to the Teachers' Superannuation Act. In our preface, which begins on page 2, we have outlined the background to our position on pension reform for women teachers.

I am sure the committee members will share our distress at the deplorable inequity in the pensions received by men and women teachers, and of course we hope you share our interest in changing the future. The issue uppermost in the minds of all teachers in Ontario has been the proposed change to an equal partnership model for the governance of the new teachers pension plan.

Along with our colleagues in the other four federations, FWTAO supports the change to partnership. We urge the standing committee on social development to persuade the government to set aside its reluctance to consider a real dispute resolution mechanism, such as arbitration, and enter into genuine partnership with the Ontario Teachers' Federation.

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However, unless a true equal partnership emerges from this very long and arduous round of discussions about our pension plan, FWTAO prefers that the structure of administration remain unchanged. Many details about the new plan have been agreed to between OTF and the government. A merged plan, diversified investments and the use of aggregate funding to determine the financial status of the fund have been accepted by OTF.

Along with the other teacher groups, FWTAO awaits government acceptance of a dispute resolution mechanism to signal the beginning of authentic partnership. FWTAO is also very concerned about improving the benefit structure in our pension plan. We support the four benefit improvements proposed by OTF. A pension after 35 years of service in education must become a permanent feature of our plan. As noted in our submission, the burden of reduction factors falls very heavily on women and I would refer you to the chart on page 53 about that.

A move to an unreduced service pension at age 60 would alleviate the problem for many women. You will find on page 13 an example of the communications we receive on that subject. The calculation of the reduction factors when they must apply also needs to be changed. The current system discriminates unreasonably against those who choose an earlier retirement.

In addition, we strongly urge the social development committee to support the modest pension improvement suggested for the pre-June-1982 retirees. It is inexcusable that their request has gone uncorrected for so long. The cost estimates for all four benefit improvements is not high. I refer you to the chart on page 52.

On the more difficult issue of the contribution rate and funding of the pension plan, FWTAO sees no merit in contributing one penny more than is necessary to properly fund the benefits. It has no merit for teachers and it has no merit for the government. So much distress has developed between teachers and the government over the contribution rate and fund management that any contribution rate increase will be suspect.

However, FWTAO members are prepared to pay what is absolutely necessary, as we have always done. If the contribution rate established in 1989 proves insufficient to provide the benefits, then a subsequent reconsideration is always possible. As the charts on pages 56 and 57 attest, most teachers already set aside a good deal of salary for retirement security.

Turning to the particular issues in Bill 66 that affect women teachers, FWTAO has four recommendations of urgent concern to this organization. First, FWTAO believes it is a very backward step to allow occasional teachers to opt out of participation in the teachers pension plan. We hope the social development committee will take time to consider the consequences for some women if this change occurs.

As noted in our submission, most occasional teachers are women. The temptation to defer planning for retirement until it is too late is a very human and understandable characteristic. Nevertheless, occasional teachers age at the same rate as teachers under contract. Inevitably, they will need a pension and all the service credit they have given to education. Let's ensure they have it by maintaining their mandatory participation in the pension plan of the profession.

FWTAO's second concern for women teachers in Bill 66 comes from the proposed previous service requirement before a person can purchase service credit for parental absence. Again, this is an incredibly backward step for the government of Ontario to propose. Recent judicial decisions have deplored the extent to which women alone bear the penalties of child bearing. This change falls on the new young woman teacher who is unfortunate enough to become pregnant before some bureaucratic measure of time has been attained.

No evidence exists that the current system, which requires no previous service, causes the slightest problem to the fund. We urge the social development committee to suggest the government refrain from introducing this change.

The third and major problem noted by FWTAO is the reintroduction of the actuarial costs if time lines are missed. One member of the legislature said that during the second reading debate on Bill 66, he did not speak actuarial. It is a difficult language and not easy to understand. Without pretending unlimited expertise and by knowing the games that can be played with numbers, I refer the committee members to the comparison of costs on pages 62, 63 and 64, prepared for us by an actuarial firm.

The power of actuarial assumptions is clear. Depending on what is assumed about interest rates, salary increases and so on, the actuarial cost ranges from \$51,172 to \$83,972 for a woman to purchase one year of service credit at age 60. It is always less costly for a man. FWTAO has spent some time deliberating on the impact of this change. We recognize that comparing contributions plus interest to actuarial

costs is somewhat like comparing apples to oranges. They just are not the same.

However, we have some past experience to rely on. Before the possibility to purchase service credit by paying contribution plus interest was made available in the 1983 Act, women did not purchase credit for maternity absence. In 1988 alone, 866 women did so. This change in such a short period cannot be just the result of other social changes taking place. The affordability of the option must have played a significant part in a woman's decision to purchase a maternity absence. On pages 36 through 38 we have outlined what the increased cost will be for women under the assumptions in the three different cases.

FWTAO objects strenuously to such a change for parental absence and urge the social development committee to retain the current practice of contributions plus interest for parental absence. Finally, FWTAO is concerned that the new teachers pension plan does not include the concept of position-sharing. As the numbers on page 65 indicate, many more women than men have used the opportunity to improve their pension prospects. FWTAO suggests that position-sharing become a permanent feature of the teachers pension plan.

In the last section of our submission, FWTAO has outlined three other concerns: (1) a three-year transition period into the part IX provisions for purchase of credit; (2) removal of the previous service requirement for payment for religious holidays; and (3) added language related to the payment for strike provisions placed in section 95.

We hope that our comments today help the committee in its deliberations. We welcome your questions. You will see in our brief the summary of our recommendations are on pages 46 to 49.

1640

The Chair: Thank you, Ms Penfold. Any questions from the committee? Mr Reyecraft, please.

Mr Reyecraft: Thank you, Madam Chair, and thank you to the members of FWTAO for the presentation this afternoon. Because of the time, it may take a little while to thoroughly digest all of it, but we will certainly undertake to do that.

I wanted to ask you about a point you raised early in your presentation, and that related to binding arbitration as a method of settling disputes. I know you are familiar with the model that is proposed in the partnership proposal that is put forward in the bill. As I understand that proposal, it allows no changes to occur to

benefits without the consent of both government and teachers. Should they be unable to agree on those changes, even after mediation, the result would be a change in the contribution rate. It would be determined by the actuarial assessment.

It seems to me that when teachers and government are unable to agree on a benefit improvement, in the case of surplus that obviously has to result in a reduction in contribution rates for teachers. I cannot see the disagreement about how to deal with a deficit in the fund as being a major source of controversy for the two. It seems to me the former is more likely to be the item that would go to arbitration, if such a model was adopted, rather than how to deal with the surplus. Is that your assessment of the situation?

Ms Penfold: I will start the answer and perhaps my colleagues will fill in as well.

That may possibly be true, but regardless of what is more likely to occur as a dispute, what we are saying is that no matter which is more likely, one or the other, if there is a dispute, we need a dispute mechanism to solve that dispute. We believe that if the government and the teachers cannot ultimately agree, let us suppose—you know, social issues are always changing in our province and they continue to change for women teachers. Suppose in the future we strongly feel the need for a benefit for women teachers and we cannot reach agreement, then we want the ability to have a third party take a look at that dispute.

Mr Reycraft: Okay. On another matter then, I think the Ontario Secondary School Teachers' Federation is—

The Chair: Next.

Mr Reycraft: —next on our agenda for the afternoon. I have had an opportunity to look at their brief in advance. They are suggesting that ultimately they would like to see the teachers-control model of the pension fund adopted. Can I ask if that is the position of FWTAO?

Ms Penfold: It is our position, the same as the Ontario Teachers' Federation position, that at this point in time we are agreeing to an equal partnership, with all of the things that I have mentioned we have already agreed to, as long as it is truly an equal partnership with a dispute resolution mechanism. We are not seeking to take over the fund ourselves at this point in time. We want an equal partnership.

Mr Reycraft: Do you believe that the partnership model that is put forward is not equal?

Ms Penfold: I do believe that as long as there is no method to resolve disputes by a third party, of some sort.

Mr Reycraft: Can you tell me what that model would allow the government to do that it would not allow the teachers to do?

Ms Byrne: If we had a final binding dispute resolution mechanism?

Mr Reycraft: Yes.

Ms Byrne: If we do not have a final binding dispute resolution mechanism, if a disagreement is reached, how can it possibly be resolved? The government would still have the authority to make a change that we perhaps did not care for and that—

Mr Reycraft: No, that is not what is proposed in the model. The government would not have the authority to make a change.

Ms Byrne: Either the contributions go up or the benefits go down.

Mr Reycraft: Contribution rates would automatically change.

Ms Byrne: But we would like to have the neutral outside authority have the chance to examine the dispute. We do not believe that we would be putting forward positions that were not defensible and therefore we want that chance for the third-party arbitration.

Mr Morin-Strom: Over the last couple of weeks, I have been dealing with the public service pension bill in another committee of this Legislature, and this one, the teachers' pension act, has the second and third options flushed out to a much greater degree than the public service options even reached discussion stage with representatives of the public servants of the province.

I notice that there is a complete package of amendments from the government in terms of its position on the joint control model. In your view, is the government's proposal a joint control model and will you suggest that the committee move on that one in the state that it currently stands?

Ms Penfold: I believe in my remarks I said earlier that we, along with OTF, accept the proposal for the joint partnership as long as there is a dispute resolution mechanism, and if that fails, we prefer to go back to what we had.

The Chair: Does that answer your question, Mr Morin-Strom?

Mr Morin-Strom: Not completely, because I presume that what will happen if in fact that does fail, according to the way the bill is written, is

that the government-control model will be the one that will be moved on by the government. That certainly is what happened as a consequence of the failure of reaching an agreement with the Ontario Public Service Employees Union. What is your response to what would appear to be the government's intention, which from what I have seen to this point is that in fact there is really only one model on the table and that is the government-control model?

Ms Penfold: We would certainly find that disappointing if we have to get to that. I mean, that is really stating it mildly and politely. That is not what we are seeking; that is not what we want.

Ms Byrne: And the government-control model, as it has now been developed and fleshed out, is much more objectionable to us than what we already have. I mean, we object to the paternalism of the old system and we would object even more strongly to the government-sponsorship model that has been designed.

We want the partnership. The one element is still missing to make it true equal partnership. Failing reaching a true partnership, then the option is to leave it as it is until we can resolve these differences.

Mr Morin-Strom: There seems to be some problem, in that talking to the government, and I guess in your case you have brought up some particular concerns of women teachers, both with respect to retired—you have, for example, figures that women are in fact receiving much lower pensions than men, on average. At the same time, the kinds of provisions that are being put into this bill will require women to pay higher contribution rates to buy back service than men will, for example. What discussions have you been able to have with the government with respect to particular concerns of women teachers in the province?

Ms Byrne: We have had no separate special discussions concerning women. Naturally, we operate through the OTF structure and all our discussions are common. Our positions are put forward within those discussions, so certainly they know what some of our concerns are.

Mr Morin-Strom: But the government has not provided for discussions on an individual basis with each federation?

Ms Byrne: No.

Mr Jackson: My questions are building on Mr Morin-Strom's and they have to do with that point. Some of the concerns that you have referenced did emerge in the recent document

regarding amendments to the Employment Standards Act and some of the work that was done, and that is a very difficult document to get through. I finally did get through it.

1650

I would be anxious to know, given that the Ontario Advisory Council on Women's Issues is plugged into this issue and aware of this issue, you have obviously apprised it of its implications towards pensions for women. That is clearly understood by them, but they are in fact an arm of the government—they say they are arm's length from the government—and they advise the government. In any way has there been linkage between the teacher pension questions you raise here, the government's stated interest in amendments to the Employment Standards Act and its implications for pensions?

Obviously, the pension reform as we see it in Bill 66 is deficient in addressing those important points. Have you heard anything at all from the minister responsible for women's issues that would indicate she is even aware of these concerns?

Ms Westcott: As you know, we certainly have made presentations on many occasions about our concerns for women and pensions for women, and at every opportunity that we have, we raise the issue with any new legislation that may come up. We have certainly made a presentation regarding the proposed changes to the Employment Standards Act. We have not, however, made direct presentation related to the involvement of more than one ministry, if you will, in the proposed changes.

Mr Jackson: I guess where I am coming from is that it strikes me that the Treasurer (Mr R. F. Nixon) and the Minister of Education (Mr Conway) sort of put together this package, and it is apparent that it has not had anybody else's influence attached to it, and yet there are people within cabinet who are at least aware of your concerns that you have raised in your document. Have you taken the time to contact Mavis Wilson or others with respect to these concerns to determine why they have not found their way into this legislation? I have to hang it on the fact that those are stated objectives for the government and many politicians in this province, and yet when it comes to the wording in legislation, it is not there.

Ms Penfold: We have made attempts to meet with the person in charge of women's affairs and we have not been able to set up that meeting. There have been three attempts made. I under-

stand there is a possibility it could occur in January.

Mr Jackson: After the legislation is passed?

The Chair: Are you finished, Mr Jackson?

Mr Jackson: No. I just asked, after the legislation is passed? You are aware that the government's stated intention is to have this passed before 20 December?

Ms Penfold: We are aware of that, yes.

Mr Jackson: And you would assume that the minister is aware of that also?

Ms Penfold: Yes.

Mr Jackson: Thank you.

The Chair: Mr Keyes.

Mr Keyes: I did not have my hand up, but I would be happy to have a question.

The Chair: I thought you did have your hand up.

Mr Jackson: You were just excited that I was getting cut off there.

Mr Keyes: No, no. Do you have another question?

The Chair: Does anybody else have any other questions?

Mr Keyes: I would like to ask one or two, if they want. I was just wondering why the delegation used the information—by your own admission, as you were determining some of the tables, you used assumptions which you admit have not been agreed to by OTF and the government when you were looking at rates of return. While it reflects your case very well, you have a valid case without using assumptions in your calculations which have not been agreed to by OTF and I wondered why you did that.

Ms Penfold: We wanted to show you the range of the financial costs, depending on the assumptions used. The whole argument has been very fundamental and a lot of the background to these arguments has to do with the power of actuarial assumptions, and I do not think there could be a better example of it than in the three cases. Just alter those assumptions by the tiniest amount and the outcome in terms of what it would cost an individual if you use actuarial costs is quite enormous, \$50,000 up to \$83,000, and that holds true in all your long-range thinking about pensions, so it was to show you the range.

We do not know precisely. In point of fact, I do have a chart. I can add another chart, if you like, using the actual assumptions that the government used in doing some of its costing. It only gets confusing, because we do not know

precisely what assumptions would be used when they are doing these costs, but we know it will be more expensive. That is pretty much a given.

Mr Keyes: All right.

The Chair: One very short one then, Mr Jackson.

Mr Jackson: Thank you. I was interested in your comments about position-sharing, or what when I was a trustee we called half-time teaching. I realize now I am supposed to use the term "position sharing"?

As I recall, there are certain benefits that the board and the employee paid at 100 per cent rate even for position-shared teachers. Is that not correct?

Ms Penfold: That was a matter for negotiation at the local level. If the collective agreement provided for that kind of special treatment of a position-sharing teacher, it occurred, but position-sharing for the purposes of superannuation simply meant the woman was paying full contributions though receiving part salary.

Mr Jackson: I understand that, but the point I was getting at was more to do with what I thought was the experience, or maybe it was just the experience in the Halton Board of Education, where I was negotiating, that the predominance was full-time benefits contribution even though you were not teaching full-time, and yet the option of denying the ability to make up the credits in order to top up the pension. It seems to me that part of the reason that was occurring was because of the surplus of teachers at the time and modified pregnancy leave adjustments, which is what it was used for in most of the cases I was familiar with, and yet now in a time of teacher shortage it almost represents a punishment. I wanted you to comment more fully on that.

Ms Westcott: The provisions that you would have found within the Halton board were matters that were negotiated in the local collective agreement. Certainly they were promoted by FWTAO to ensure that a position-sharing teacher was not disadvantaged on an ongoing basis, but position-sharing for the purposes of superannuation is simply the notion of full-service credit for pension purposes upon paying full contributions. We would like to make that a permanent feature, because it certainly is not an issue that women teachers do a lot of part-time teaching compared to any other group.

Mr Jackson: Thank you.

The Chair: Thank you all very much. I think that the brevity of your presentation helps us all

to understand your concerns more. Mr Reycraft, do you have another?

Mr Reycraft: Madam Chairman, I have just been advised that Bill 119 is being called upstairs. I am responsible for that piece of legislation in the chairman's absence, so I must go upstairs. I give my apologies to the other members of the committee, to the Ontario Secondary School Teachers' Federation and the other group that will be appearing next, but maybe it will be fast.

Mr Jackson: I would love to be able to say you will be missed, but I will not.

Mr Reycraft: I hope I will be back.

The Chair: Do you expect to be back before seven o'clock?

Mr Reycraft: I certainly hope so.

The Chair: All right. The representatives for the Ontario Secondary School Teachers' Federation, please. Mr Head, if you would introduce the people with you for purposes of Hansard, that would be helpful. I think we know you, but it is helpful to have it recorded.

Before you do that, I hope you will, after making those introductions, tell us how you intend to reduce this time to 30 minutes. I think it was very helpful that you presented it to us a good 72 hours before your presentation. It has 30 recommendations. Even reading through those recommendations will take the whole time. I presume you have a strategy—you usually do—and I would like you to present the strategy to us immediately upon your introduction, because I would still like to have 10 minutes of questions.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

Mr Head: Yes, thank you, Madam Chairperson. For the record, I am Jim Head, President of the Ontario Secondary School Teachers' Federation. On my left is Doris St Amand, vice-president. Beside her is David Eaton, our general secretary. To my right is Ron Harris, our OSSTF staff adviser on pensions, and to the right of Ron is Gerald Armstrong, our superannuation commissioner.

I will be making some initial comments. We will then present a short video we have prepared on merging the two funds, and just for your information, we don't intend to go through the brief at all. We would like to look at an overview. I would like to take time therefore, after the questions, if I might, to have a closing comment of a very short nature, and I would appreciate if you—

The Chair: You are not even going to present the executive summary. In other words, this was backup for the presentation today.

1700

Mr Head: I am going to present what I think are the issues here.

The Chair: Okay, thank you.

Mr Head: The Ontario Secondary School Teachers' Federation strongly supports the position put forward by our umbrella group, the Ontario Teachers' Federation. We have expanded on some items such as the qualification criteria for a nonreduced pension. That is on page 23, and especially page 25, which is a slight new wrinkle; the rights of our disabled members, page 28, and the general administration of the pension plan, page 31, which is of particular importance to the members of my federation.

I am sure you will take the opportunity to read and understand the positions we have put forward in our brief, so I am not going to concentrate on its contents but instead present an overview of the issues before this committee.

For the last 18 months, teachers and government have been at loggerheads over pensions. Why has this conflict arisen between the government and its employees?

I suggest to you that the continued paternalistic attitude, bordering on arrogance, of this government and of past governments has been the catalyst that has united teachers of all affiliates. People who have become teachers are by their very nature fair and understanding. We have a great sense of democracy and due process. Many of us actively participate in the politics of this province as members of every major political party.

This government has continued the pension arrogance of the past by denying its employees the right to participate as equals in the negotiation of pension reform and the management of their pension plan. It is the teachers' money.

Put yourself in our shoes. After 72 years of paternalistic treatment by government, the Treasurer invited teachers to become "full and equal partners" in the future management of their pension plan. The dream lasted four months. On 11 January of this year, the Treasurer sent a clear message to the teachers of Ontario: "You will not agree with us, so the government will legislate."

Despite what the committee heard last Tuesday from government representatives, no meaningful pension discussions have taken place since March 1989. Teachers have been excluded from the process. An opportunity has been missed.

As with many citizens of this province, pensions have not always been our number one priority, but Conrad Black opened our eyes. The workers of Ontario are indebted to Dominion Stores employees, who showed us the importance of membership awareness and membership involvement in a pension plan. It is not just teachers and public servants who must take a hand in shaping their pension futures; it is the responsibility of every citizen of this province.

Dr Slater warned the government that "Considerable mistrust, doubt and scepticism exists about teachers and public pension matters." Why do teachers mistrust the government? Since 1971, our superannuation commissioners have told our membership that the government has been ripping us off because of the low interest paid on the assets of the fund. Pardon the colloquialism. Recent data tells us the commissioners were right.

In 1974, the Leader of the Opposition also recognized that the government was not paying a fair rate of return on money that it borrowed from the teachers' fund.

Robert Nixon chastised the government of the day for paying two per cent less to the teachers' fund than it was paying to borrow money from other sources. Malcolm Rowan's report proves that 13 years ago Mr Nixon was right. Rowan tells us that the return on investment on the teachers' fund could have been up to two per cent higher if the government had invested the money more appropriately. On page 20 of our brief, we refer to a report commissioned by Rowan that tells us the assets of the TSF would be about \$8 billion higher had its assets been invested in a diversified portfolio. Taxpayers should be as annoyed with the government's lack of responsibility as teachers are.

If the government had listened to OTF 10 years ago and adopted a diversified investment portfolio, assets of the fund would be much greater and therefore taxpayers would have had to pay less to meet their obligations as the employer. Teachers and taxpayers are left with the unanswered question, why are taxpayers and teachers being forced to pay for the government's lack of fiduciary responsibility?

The bottom line in this conflict is, who controls the pension plan? For the last 72 years, government has controlled the teachers' pension plan, and teachers have paid the price. Government amendments to the joint partnership model put forward to this committee continue government control.

A default mechanism is built into the process. If the partners disagree on a contribution rate or on the benefit accrual rate, changes are automatically made in favour of the government. When the partners agree to amendments to the pension plan, the Lieutenant Governor in Council must make those changes. However, section 9 of the act still allows the government to make unilateral changes in the pension deal. This is hardly a partnership of equals.

What do teachers want? We want a pension that will allow us to live in dignity during our retirement; a pension that will allow us to retain our self-respect, to maintain a reasonable standard of living and not be a burden on our families, our community or our society; to be good taxpayers.

Teachers are willing to pay for a pension that meets those goals and we are willing to work with others to achieve fair pensions for them that also meet these goals. Teachers want an actuary to make the right guess about how much we should pay during our working lives to provide this pension. We want to be sure that there is enough money available when we retire to achieve the goal. The bottom line is not the increase in contribution rate. It is not the conservative actuarial assumptions used in the past. It is the control over the decision-making process that is at issue.

Again, why do teachers not trust the government? Teachers are bitter. They feel they have not been fairly treated by this and past governments. They feel this government is abusing its power as sovereign, and I do not disagree with that view.

Having said that, I realize my colleagues and I, government representatives and you, must rise above this attitude.

The "pension deal," as Malcolm Rowan called it, is staring us in the face. Teachers want an equal partnership. The Minister of Education, the Treasurer and, I believe, even the Premier (Mr Peterson) indicated that a partnership was the preferred option of governance for the teacher pension plan. Let's do it.

What is so magical about the 1 January implementation date? The foundation documents have already been written. Give the technocrats time to design a pension plan we will all be happy with, a plan that meets the level of benefits sought by the plan members and a cost acceptable to teachers and to the taxpayer. What is needed is the political will of the government and of the Ontario Teachers' Federation to strike the pension settlement. We need a fresh start.

The OSSTF has prepared a video to explain our vision of the transition from two pension plans to one. It is very short, and then we would like to go to questions.

1710

[Video presentation]

Mr Head: We do have copies of that video for each member of the committee. I am sure they will take it home and study it assiduously.

The Chair: Watch it right after the news every night. Mr Keyes, please.

Mr Keyes: Mr Head, I don't want to have to go to bed with a bit of a nightmare in my head after watching that. It is very professionally done, but I think, in all fairness, there is an invalid assumption contained in it, which I think is unfortunate, that you foist upon all of your teachers across the province, but it is one that has been commonly used throughout this entire time of discussion. That is the whole thing that says the government is responsible for the unfunded liability in the TSAF, and that is not the fact.

I want you to comment and give me your justification why you have put that in your video and out to every member, because I think it is unfortunate to provide that. You earlier admitted under testimony here today that there is no legislation in the Superannuation Adjustment Benefits Act of 1975 that makes that the responsibility of the government. I want to comment further on that, because when you talk about such things as the highways, etc., will you please go back and give us the reason why you have included that?

Mr Head: Sir, I do not have any problem with that. I take issue when you suggest that we may be misleading our teachers. First of all, it is the teachers' money, and I think the surplus in the main fund shows that quite clearly, and it is your own pension experts who have suggested that you are responsible for the unfunded liability. I will ask my pension expert, however, to answer that.

The Chair: Mr Harris, you are the pension expert.

Mr Harris: That is what they tell me. The one thing that we have to realize, in 1975 it was the government of the day that brought in the Superannuation Adjustment Benefits Act. Through that act, they set up a fund that was used to add to the basic pensions, as we pointed out in the video. That, in our opinion, is a separate contract to the teachers of Ontario. The teachers contribute, as well as the government.

When it was indicated to us by the Treasurer in September 1988 that they wanted to enter into separate discussions with OTF about the pension plan, it was suggested in that letter that the government was also responsible for the unfunded liability in the adjustment fund. So I suggest to Mr Keyes and other members of the committee that that has been the government position all along.

It was only at this hearing that I was quite surprised to hear, for the very first time, that the government position was to pull the two funds together so that it would use the surplus in the main fund to offset the unfunded liability in the adjustment fund.

I think it is important to realize that the government has an obligation under the Superannuation Adjustment Benefits Act to pay that. They also have a moral obligation to do it. They also have indicated, which was their initiative, not to continue the pay-as-you-go plan but to go to a fully funded plan. That was a government initiative.

We must realize that under a pay-as-you-go plan, there is no unfunded liability. So it is at the government initiative that one is being created, and what it is doing is suggesting that the teachers pay for it. I think that is wrong and I think the government would be on the right track if it were to follow the model we are suggesting and what I was led to believe in the beginning was the correct way to go.

Mr Keyes: I believe representatives of OTF agreed with this whole business that we should go this particular model rather than foist upon the future contributors of the plan excessive payments that would be far greater in excess. As we all know, at the time, in 1975, when SABA came in, I believe there were six working teachers to every retiree. By the year 2000, we will have approximately two working teachers contributing to the fund for every retiree. Just there, you can see the phenomenal increase that will take place in it.

So we have to be very careful about that, and I believe again, in correction, that from the very beginning, from the Treasurer's point of view, the acceptance of the unfunded liability in TSAF was always combined with the aspect that this will look after any of the so-called shortfalls in investment policy of the past, but it will be done in merging the fund.

In the video, it talks about two plans. I submit to you there is only one plan, and that is the teachers' superannuation fund, which has two funds to it; one plan with two funds. It is a minor

difference, but I think in philosophy it is important that we have one plan.

The question there would be also—and I want to leave lots of time to the other partners—does the OSSTF agree with the 1987 evaluation of the fund that was given?

Mr Head: I am going to let our commissioner, Gerald Armstrong, answer that, since he is much more familiar with that.

Mr Armstrong: Which 1987 evaluation are you referring to, the one that was conducted by the commission or the one that was conducted by the government using 1987 figures?

Mr Keyes: You take your choice. Comment on them both.

Mr Armstrong: There are significant differences. In the superannuation commission's evaluation, the surplus was set at \$33 million. In the evaluation conducted by the government staff, the surplus was \$1.885 billion—a rather large difference between the two. I have noted with interest, in listening to you last Tuesday and again today, that when you speak of actuaries, you always seem to give them a kind of reverence, that they never can be wrong. There we have the same data with a difference between \$33 million and \$1.885 billion.

1720

If I might respond to another part of your question, you were concerned about the burden being placed on future taxpayers. If I might point out to you, on page 54 of Bill 66, what it does is lay out a schedule of payments into the future for the unfunded liability. What this does not clearly indicate is where the responsibility of the government lies.

First of all, there in 1990, \$187 million will be paid out towards the unfunded liabilities. It is an interesting number because, as our video suggested, the government has already committed to paying—and I am using 1987 figures here—about \$100 million for the inflation protection of the pre-1975 retirees. The government is also committed to paying \$21 million—in that range, about \$21-million—to low-pension subsidies. Now, that works out to a commitment, without any kind of merger, of about \$121 million. In order to protect future teachers, loading them with the extra costs, as well as to protect future taxpayers, the government has put towards this fund about \$66 million. I think that is one of the problems we are facing here.

Mr Keyes: One of the other problems, though, that you face when you talk about the two evaluations is the difference between one

evaluation done with market investments and the other evaluation being done with government debentures as exist. I see Mr Harris shaking his head. That won't record well in answer.

The Chair: Mr Morin-Strom, I think, has a question now.

Mr Morin-Strom: I think if we are going to discuss the credibility of actuaries, in particular, vis-à-vis the government's positions on these bills, one has to look at the fact that professional actuaries have been severely criticizing this government for the actuarial assumptions that have been put in place in this bill and in the Public Service Pension Act as well, and the kind of calculation that has resulted in a payment on the unfunded liability which does not even come close to covering the interest costs on that unfunded liability in the initial years and, really, a burdening of future generations of both teachers and taxpayers of the province of Ontario. The payment schedule here is going to result in the unfunded liability going up for quite a number of years into the future before there is any reduction in the unfunded liability at all.

Mr Jackson: Leave those to the years when there is a new government.

Mr Neumann: That is what you guys did, left it all to us.

Mr Jackson: The way you are handling it, they will give it back to us.

Mr Morin-Strom: One of the concerns that I have is the fact that this bill overrides many of the provisions of the Pension Benefits Act. In particular, the fiduciary responsibility of a board to ensure that a plan is managed in the best interests of the plan members is being overridden by provisions of this bill.

The Chair: I still have not detected a question. You have made a series of comments. I thought this was time for questions, but I am waiting. Have you got a question?

Mr Morin-Strom: In your view, do you want a plan that does put the management of the fund at arm's length from the government, and in fact, will the government's proposal do that?

Mr Head: I think if we are looking at a true, equal partnership, we are looking at an investment policy that would be at arm's length, because it would be a true, equal partnership. Maybe Mr Harris would like to comment on that.

Mr Harris: One of the difficulties we are having is the total lack of discussions among the Ministry of Education, the Treasury and representatives of the teachers through OTE. What we

would like to have happen is a joint partnership. The key words that were used in the letter of the Treasurer were "full and equal partnership," so the thing you have to rely on are the adjectives to the word "partnership."

We are willing as teachers to accept the risks and rewards of managing together a pension plan, so we are willing to go into a diversified program. We are willing to look at the contribution rate, and if it requires an increase to do so, we are looking at changes in benefits that will address the needs of the membership.

The other key word is "equal." There must be a way that the people sitting at the table can be seen to be equal and to operate as equal. One of the problems that remains outstanding is to come up with some way of solving disputes.

The other thing is, how do you make amendments in the future to a pension plan? The way the government has laid it out is that the teachers and the Ministry of Education representatives will sit down, they will decide that this is an agreement and then they will say, "Now that we are agreed, we will take it away and we will write it."

Now, having been involved in collective bargaining for 20 years, I find that very objectionable because I am used to sitting down as an equal with my school board and saying, "We will agree on the language that is going to be used." The government does not want to work that way. It says, "We will agree on the concepts, but we are going to write the language and we will interpret the language because that is how laws come about." That is objectionable.

The Chair: I would just like to remind you, Mr Head, you asked to sum up. We have three minutes left in your presentation and Mr Jackson wants to ask a question.

Mr Head: I only need a half a minute.

The Chair: Okay then, Mr Jackson.

Mr Jackson: I will let Mr Harris finish, because he was in the area that I wanted to question, so if he can, finish up—I know that 10 years ago he was negotiating for the teachers when I was negotiating for the trustees. He said he did that "equally" at Halton.

The Chair: Okay, it goes a long way back. Please continue.

Mr Harris: You didn't feel like an equal at that time?

Mr Jackson: As long as you felt like an equal, that is what mattered.

Mr Harris: Touché.

The Chair: Mr Harris, you have some more pearls for us, please.

Mr Harris: Yes, I will refrain from that one. We are used to this now.

The thing that is key to everything, as Mr Head pointed out, is the control of the plan and to stay as equal. Mr Reyecraft has indicated from time to time again at these hearings that the model put forward by the government representatives, or what they will be putting forward, has a veto power; that the government will act as equals and no changes could be made to the pension plan.

I would dispute that, because if you take a look at section 9 of the act, the powers to amend the plan clearly rest with the Lieutenant Governor in Council. What the government people have put forward in the amendments has a default mechanism in it. It says that if the two parties can agree, the Lieutenant Governor in Council has to make those changes. If the parties do not agree, then there is a default mechanism and it goes, in my opinion, in favour of the government. It lowers the contribution rate. It changes. It increases the contribution rate if there is not enough money there, and if they have to increase it beyond 10.9, then you go to 10.9 and you decrease the value of the benefit, the accrual rate. To me, that is in favour of the government.

Notwithstanding that, there is nothing in the act that prevents the government, in section 9, from making unilateral changes to the act. If you read the language put forward in that particular section, you will see that it does not require the agreement of the parties before the Lieutenant Governor in Council makes a change. I would suggest to you that there are two models where the government maintains control—that is, the control model and the joint partnership—and in the last model, it is even suspect in that because section 9 still could be implemented.

Mr Keyes: I just do not agree with that. Under section 9, under partnership, there are constraints.

The Chair: Your 30 seconds is—

Mr Head: We thank you for the opportunity to state our case. We wish to point out, however, that if we do not achieve an equal partnership or an acceptable process, we will continue to find ourselves in conflict. Without these amendments, a second round with the government begins on 1 January 1990. The public secondary school teachers of Ontario will continue to demand their right to a full and equal say in their pension future. Thank you.

The Chair: Thank you very much.

The Ontario Public School Teachers' Federation, please. Mr Martin, will you be making the presentation? Would you like, for the purpose of Hansard, to state whom you have with you today.

Mr Martin: Yes, I will.

The Chair: Thank you.

Mr Martin: Do you have a quorum?

The Chair: We consider four at this moment, and here we now have five. Yes, please go on. I am sure the rest will be back very momentarily. We have your brief. Would you like to bring the brief forward, members of the committee, the blue brief that was passed out earlier today. We would like to begin then, Mr Martin, please. Is everybody ready to begin? Please begin so that we can have at least one hour for dinner. I am sure that we all will need a break of one hour.

ONTARIO PUBLIC SCHOOL TEACHERS' FEDERATION

Mr Martin: I would like to introduce the people who will be making the presentation. I am Bill Martin, president of the Ontario Public School Teachers' Federation. To my far left is Burleigh Mattice, our staff expert on pension negotiations; Dave Lennox, our deputy secretary, and David Kendall, past president and OTF table officer.

OPSTF appreciates the opportunity to make a presentation on behalf of our 24,000 members to the standing committee on social development.

Since Canadians are retiring earlier and living longer, income in the retirement years forms a larger part of their lifetime earnings, pensions therefore assuming an even more vital part of our social fabric.

To begin, I draw your attention to pages 7 and 8 of the brief. Pensions are complex, since they deal with future projections. OPSTF is pleased to note that the government shares our concern in the actuarial conservatism which has pervaded the valuations of our superannuation fund until this time. This conservatism has had the impact of understating the surplus which exists in the superannuation fund while at the same time overstating the unfunded liability in the adjustment fund.

While agreement between OTF and the government has been reached on two of the major actuarial assumptions, real salary increases and long term future inflation rates, agreement has not been reached on the third major assumption, real rate of return of investment. Since interest income forms between two thirds and three quarters of the annual cash flow, this assumption,

on which there is no agreement, is a very critical component of any actuarial evaluation.

The Ontario government is the sponsor of the teachers' pension plan, and as sponsor, the government has the obligation to ensure that the benefits are paid and the fund is financially secure. In this matter, the government should be treated in exactly the same way as any other plan sponsor. However, in the past, it has occupied a privileged position. By law, the only source of investment for our funds has been government stock or debentures. This has resulted in a pattern of concessionary investments which has existed until the present time, although it is acknowledged that the 1973 amendments did improve the situation. Our fund, unlike any others, therefore, has paid the price for employer sponsorship.

Like OTF and the other affiliates, we look forward to a fresh start in our approach to pension matters. To that end, the teachers of the province were prepared to assume joint sponsorship of our plan as part of a true partnership, with all the rights and duties that such an arrangement entailed. We are not, however, prepared to accept the financial obligations of partnership without equality in all matters, including future negotiations. Bill 66 in its present form does not provide that equality.

Pages 13 through 17 refer to surpluses and deficits. The matter of the financial health of our pensions has been a topic of much discussion. Although actuarial evaluations are, by their very nature, best guesses, certain conclusions are apparent. The superannuation fund is in surplus while the escalation fund is in deficit. Recent court decisions, notably that affecting Dominion Stores and, more recently, the decision affecting Ontario Hydro, support the contention that providing there is no language in the plan establishing the rights of the employer or sponsor, any surplus belongs to the fund.

Unfunded liabilities under the provision of the Pension Benefits Act must be retired by the plan sponsor. That is you, the government. Since there is no language in the Teachers' Superannuation Act to give the government any rights with respect to surplus, the surplus of the superannuation fund belongs to that fund, and without the consent of OTF, no portion of it should be used to defray the unfunded liability in the adjustment fund.

We acknowledge that if the adjustment fund is to be put on a fully funded rather than a pay-as-you-go basis, there is an unfunded liability in the adjustment fund. This unfunded liability, we believe, is the responsibility of the

government. We further understand that the legal opinions obtained by the government confirm the position that it has a responsibility in the continued health of the escalation fund, although we have not been made privy to these opinions.

The unfunded liability can be traced to three factors: the unwillingness of the government to pay the past service cost of the escalation benefit in 1975; the unwillingness of the government to maximize interest income on the fund by diversification of investment and the fact that one per cent may not have been sufficient to pay for future costs.

Two of these factors, past service costs and diversification of assets, were solely within the purview of the government. The Ontario Public School Teachers' Federation believes therefore that the obligations of plan sponsor as well as the actions of the government place the responsibility for the total unfunded liability of the escalation fund with the government.

Notwithstanding this belief, OPSTF is prepared to allow any surplus in the main fund that remains, after past service costs for benefit improvements and the establishment of an investment reserve fund approximating five per cent of assets, could be used to assist the government in meeting its obligations for the present unfunded liability in the adjustment fund. Much has been said about the increased contribution rate contained in legislation. OPSTF does not oppose in principle the concept of an increase of the contribution rate.

Indeed, we believe that the contribution rate must be sufficient to fund the required benefit. OPSTF advocates a policy of periodic review of the contribution rate to ensure that both the pension promise is adequately funded and that the contribution rate is not excessive. We have examined the data provided by the government during discussions and can support a contribution rate in the area of 8.3 per cent.

Bill 66 contains models for future control of the teachers' pension plan and fund. One of the government's models is aptly named government-control model. In that model, absolute control is vested with the Lieutenant Governor in Council, as outlined on page 17 in our brief. The protection of committee hearings and the necessity of obtaining approval of the Legislature is stripped and the plan is placed without recourse totally under the control of the cabinet. The limited input that teachers presently have in their plan would be further eroded.

The second model, mistakenly called equal partnership, requires teachers to assume equal responsibility for any adverse financial experience. However, our ability to share in rewards is curtailed by the fact that no method exists to resolve disputes. We find no evidence within the act or schedule that limits the Lieutenant Governor in Council's ability to legislate only items in which agreement has been attained. The existence of a double veto could result in a paralysis of action benefiting no one or an alternative default mode where the government position is adopted by default.

Although member-run has a certain surface appeal, there are the distinct drawbacks which make it impractical, at least at this time. Pensions are part of the compensation package bargained between employer and employee. As such, both have a vested interest in ensuring that the plan exists as a viable financial entity. The government will remain as an interested party in our pension and as such must continue to be involved. Examination of a member-run option reveals that the government recognizes its continuing concern and will retain rights both as legislator and as the representative of the employer.

OPSTF believes that the only practical approach is the creation of a true, equal partnership to properly represent the interests of both the plan participants and the government. To that end, we do not see a member-run option as being viable, at least at the present time.

In consideration of the equal partnership, OPSTF is committed to the concepts outlined on page 28. I would particularly draw your attention to the last point where it states that negotiation impasse must be subject to a dispute resolution mechanism. We believe several myths surround the concept of arbitration as a dispute resolution mechanism. I would like to take a few moments to deal with these misconceptions as they are outlined between pages 30 and 31.

The first questionable assumption concerns the fact that since the fund approximates \$20 billion, it is irresponsible to refer such matters to a third party. OPSTF must point out that this position assumes that the whole fund would be subject to the process every year and that negotiations would start from a zero base in each year. As anyone involved in negotiation knows, we start from a given base and negotiate from that base, either positively or at times negatively. We do not start from base zero. Given the present difference between the parties on contribution rates, the amount that would go to arbitration

would be a government cost of \$60 million, not a \$20-billion fund.

The government contends also that as the custodian of the taxpayers' dollars, it cannot refer the matter to a third party. If this is true, the position is inconsistent with the other government position that crown employees must refer impasse in contract demands to arbitration rather than strike. How do the taxpayers' dollars for employees' contract settlements differ from those dollars needed to pay pension dollars or benefits?

It has been said that arbitrators are irresponsible and tend to make excessive awards. OPSTF must point out that the arbitration process is a conservative process and produces neither big winners nor big losers. Arbitrators after all are interested in continued employment. What reference to arbitration would do is require both parties to justify and defend their positions to a neutral and informed third party. In order to make partnership a reality, we respectfully recommend that the committee amend the proposed teachers' pension act to provide a route to finality.

We believe occasional teachers, forming one-third of our membership, should be mandatory members of the plan. In order to ensure that these members attain a benefit consistent with their contribution, we believe that on termination of membership, these members should either be eligible to retain membership in the plan, to withdraw contributions plus interest in accordance with the provisions of the Pension Benefits Act or to transfer double contribution plus interest to a locked-in registered retirement savings plan.

Retired teachers who seek employment as occasional teachers should not be penalized by pension reduction. The pension they receive has been funded by contributions made through their working career. Reduction of pension benefits results in a windfall profit to the fund. We believe therefore that both the 95-day and the three-year restriction currently being proposed should be withdrawn.

Another windfall profit is created by the practice of requiring a teacher who has 35 years' credit in the fund, but has yet to attain the 90 factor, to continue to teach. This pension has been paid for and no additional credit can accrue. To prevent that teacher from retiring until the 90 factor is attained is punitive.

Although there has been some amendment to the strike provision, we believe the provision as written would eliminate the time credit for those

who participate in a strike and who do not contribute salary. The present practice, in place for over 13 years, provides for the retention of time credit, but not salary credit. We request that the present provision be continued.

In conclusion, I ask all committee members to turn to page 38 of our submission. When we went into negotiations, it was called a fresh start and it was also called a fact that we were going to negotiate. When you look at what has happened in the past year and a half, I think it clearly shows that very little movement has happened as far as the government's position is concerned. When you look at the original Ontario Teachers' Federation position, there has been great movement as far as the teachers are concerned. When you look at the government position, it simply appears to me at first look to be what we are right now dealing with in Bill 66. I would like to know basically what type of movement the government ever planned on making as far as negotiating these pensions were concerned.

At this time, we will take questions.

Mr Keyes: One questions I want to direct to Mr Martin on the matter of occasional teachers. I want further explanation there. You have to look at occasional teachers in another view as well. Forcing them to become members of the plan, as you request, could be somewhat detrimental to their cause, particularly if they are earning income from other sources—I can think of several as I say this—who under the Income Tax Act are allowed to contribute \$7,500 to retirement in an RRSP. If they are forced to become members of the plan, they are going to be limited to \$3,500. I was wondering how you justify putting that type of penalty on an occasional teacher who may make a higher percentage of his or her income from being self-employed outside of teaching?

Mr Martin: I will refer that to Mr Mattice.

Mr Mattice: Like the Federation of Women Teachers' Associations of Ontario presentation, we have to be aware of the fact that the majority of the occasional teachers do not have outside income. They use occasional teaching as their sole income, notwithstanding the fact it is not full-time. Unfortunately, I have to also echo the FWTAO presentation that was ahead of us, but people do have a reluctance to plan in advance for retirement income.

The concept of improved or increased allowances under the Income Tax Act, I believe is compensated for by the provision that we are requesting or suggesting, that in the event of termination of membership, they get the advan-

tage of both sets of contributions, as opposed to simply withdrawal of their own contribution.

Mr Keyes: One of the other areas was not specifically referred to. In the event of dispute resolution, while the words were not stated by OSSTF, the intimation was almost there that it would be opposed to reducing contribution rates by teachers and government. They did say that where they felt the inequality existed was in the issue of a surplus in the fund and if it goes before them and the government and themselves do not agree, then the contribution rate must be increased in accordance with the actuarial assessment and evaluation of the fund. Do you support that position, that you would not want to see the reduction in contributions?

Mr Martin: I think without the option of having a dispute mechanism, we have no other option but to take that option which may not be what the teachers want. There could be an increase in benefit and unfortunately, if there is no dispute resolution and you do not agree with the benefit increase, the only option we have to take at that particular time would be the government's position, which would be a reduction in the contribution rate.

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Mr Keyes: Would you agree that in the absence of a dispute resolution mechanism over the past, many increased benefits have been obtained by teachers even though each one of those did add to this unfunded liability total?

Mr Martin: Being new to the negotiations of pensions, I will refer it to my colleagues to my left who have been at the pension table a lot longer than I have.

Mr Mattice: The premise you say you outlined was that although there has been no dispute resolution, there have been many improvements in benefits which have increased the unfunded liability. I would have to say that the only benefit that has an unfunded liability is the escalation benefit. All of the other benefit increases, in fact since 1975 many of the benefit increases have all been a charge against the main fund which at the present time, depending upon which set of assumptions is used, has a surplus of somewhere between \$33 million—there was one evaluation presented to us that had the surplus well over \$2 billion, so somewhere between \$33 million and \$2 billion is the actuarial surplus in the main fund.

Mr Keyes: I think that is based on the assumptions made by actuaries, which I do not hold inviolate as was suggested earlier. I said

earlier that actuarial science is a very incomplete one and one where the change of a hat makes a mammoth difference. Seeing the time, I guess you want someone to ask questions. I will be glad to ask more.

Mr Jackson: I appreciate the specific focus and the treatment you have given to the dispute resolution mechanism. We had some insights earlier when we found out that the only person who ever used the phrase "full and equal partnership" was the Treasurer and it apparently was only once during that one letter. Of course, he is not here to explain what he really meant at that time.

It is clear that nobody else seems to want to tackle explaining what full and equal partnership is, just joint partnership. Can you give me a better reaction as to whether or not you feel that there can be any kind of partnership in the absence of a dispute resolution mechanism? We have to deal with this bill. You are going to have to live with something. Can you give us a better sense of how we can operate any kind of partnership arrangement without dispute resolution.

Mr Martin: I wish I could but I cannot. The answer would be no. I believe that we have to have a method of solving disputes. I will go back to what I said to Mr Keyes. If we had a benefit that we wanted to be put into the plan and there was a surplus situation down the road, and we said we would like this benefit added to the plan and the government said no, the only option we would have at that particular time would be to reduce the contribution rate, something the teachers of Ontario might not want. Maybe they wanted that additional increase as far as the benefit is concerned. That is what we believe is an equal partnership, not to have the government have the final say as far as those futures are concerned. If this mechanism is not found within the equal partnership or joint partnership, we would be better off with what we have right now.

Mr Lennox: If I can make a further comment on that, without dispute resolution the best you can do under this partnership that the government is recommending in the legislation is an Orwellian partnership. It is four years, I know, before 1994 but it is getting close—or 1984 or whenever we want to start it. The fact is that is about what the concept is. They always have the final clout.

I recognize that is what they resent. Until you are get a true partnership with some third party, who can analyse both sides of the argument, you will never get the acceptance of the teachers of

Ontario, because being second-class citizens with our pensions is not our idea of a good time. The dispute mechanism, if it is not there—going back to the present system of governing the teachers' superannuation plan, I do not see why the government, when it has such a problem with the government model, is striving to go ahead with it right now. What is this great crisis to get in this governance model, either its or the inappropriate one right now?

Mr Jackson: If that is a question to me, I could suggest that we are not abundantly clear as to who is ultimately going to end up paying for it. Trustees have not been at the table during these public hearings. I suspect they might have some role to pay at some time in the future.

My second question has to deal with what I think is a rather interesting graph on page 38, which you drew our attention to. I did not hear from Mr Keyes that he objected to what was being portrayed here. The fact that it is not in video form perhaps helped it, but I am rather impressed by the notion that there has been so much movement. Mr Harris will tell you how impressed I am when teachers move during negotiations.

My question has to do with what areas of room for negotiation there might be. In spite of the fact that the government has not moved much, there might be room for the government to move if the teachers were to continue, as they have demonstrated in their negotiation which would—for example, the contribution rate where there has already been movement on the part of the teachers: Would there be room in your opinion for movement there and some sense of mutual agreement between the legislators, who are controlled by the Liberals here, and the teachers over the matter of making this legislation and the pension plans a truly equal and full relationship?

Mr Martin: To answer your question, Mr Jackson, if you took two parties tonight and put them in a room and said, "Don't come out of that room until you have a dispute resolution that is agreeable to both parties, a method to solve disputes," I believe contribution rates, benefits and everything else would fall into place very, very quickly. Even if we had to pay a full one per cent now, three years down the road, if there was an evaluation taken and there was a dispute resolution mechanism there, we would at least have the option to either reduce that benefit at that time or the contribution rate or increase the benefits, whatever the case may be.

Mr Jackson: Thank you for your answer. I think we established during the community

college strike that if you were a TTC worker we would have had a dispute resolution mechanism, but if you are a community college teacher there is not one, so although the invitation is appreciated I do not think the government is prepared to take it up.

Mr Morin-Strom: As I read it, section 9 stays in the bill under a joint-control plan, which means the government has arbitrary and total powers to change your pension plans, contributions levels and so on, to totally revise the whole thing—not only the government, the cabinet has that right without even going to the Legislature. Do you have a proposal for what you think should be put in the bill as an amendment to achieve a dispute resolution mechanism?

Mr Mattice: We have the same reading you do, that section 9 does not die if there is a joint partnership. It remains in place. We would suggest, as OTF has, that section 9 be eliminated or amended and we would endorse the proposal OTF has made with respect to dispute resolution.

Mr Morin-Strom: Mr Keyes, are you going to give us a new amendment to section 9, perhaps?

Mr Keyes: I think we want to be sure. We are looking at section 9 as under government sponsorship in your booklets and I will accept the point that has been raised. I still think there is some confusion between the responsibilities of cabinet and the government under section 9, whether it is government sponsorship or partnership, and I would suggest people would look at that very carefully.

Mr Morin-Strom: I do not see you eliminating section 9.

Mr Keyes: We are not taking out section 9, but we are amending section 9, as you see.

Mr Morin-Strom: Adding more arbitrary cabinet power; that is all.

The Chair: I think that we will have to leave this discussion until clause-by-clause which we will begin on Wednesday.

Mr Martin: May I make one final statement?

The Chair: You may, Mr Martin, please.

Mr Martin: During the summer of 1975, the government of this province introduced and subsequently passed teacher bargaining legislation. That legislation has served as a model of fairness and equality. Together, the government and teachers have an opportunity of repeating that feat. We have an opportunity to create a true and equal partnership in a matter of vital importance to both teachers and government.

That partnership, unique as it will be, will serve as a model for others to emulate. OPSTF entreats the committee to ensure that this opportunity for forward thinking is not lost.

The Chair: Thank you very much, Mr Martin. I thank each of you, every teacher in this room and every member of the committee for being so co-operative today. Things have gone very

smoothly. I think we have had a good level of communication here and that is because everybody has followed the rules and tried to be as attentive as possible. Thank you all for your co-operation. We will resume this set of hearings at 7 p.m.

The committee recessed at 1800.

EVENING SITTING

The committee resumed at 1900 in room 151.

TEACHERS' PENSION ACT, 1989
(continued)

LOI DE 1989 SUR LE RÉGIME DE
RETRAITE DES ENSEIGNANTS
(suite)

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

Étude du projet de loi 66, Loi portant révision de la Loi de 1983 sur le régime de retraite des enseignants et apportant des modifications connexes à la Loi sur la profession enseignante.

The Chair: If I may call together this second set of hearings of the standing committee on social development for 11 December, we are in hearings on Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

We are going to divide our time tonight between the branches or regions of the Ontario Teachers' Federation, as I think OTF describes them. We had a difficulty one day last week—I think it was Tuesday—completing our agenda, so we are going to break that scheme slightly and have the Ontario English Catholic Teachers' Association present to us at eight o'clock tonight. So we will be going with 15-minute presentations for this first hour. As I understand it, Brant-Haldimand—and they seem to know exactly where they are in the agenda, if this is Brant-Haldimand—are here before us. Have you presented your brief to us? It has just been handed out. Okay. Would you please identify yourselves for the purposes of Hansard.

LOCAL INTER-AFFILIATE GROUPS,
ONTARIO TEACHERS' FEDERATION

GROUPES LOCAUX AFFILIÉS À LA
FÉDÉRATION DES ENSEIGNANTES ET
DES ENSEIGNANTS DE L'ONTARIO

Mr Ishibashi: My name is Bob Ishibashi and I am the president of the Ontario Secondary School Teachers' Federation, District 523, Haldimand. On my left I am accompanied by Catherine Eagles, provincial councillor, District 5 branch, and on my far left is Orland Harrison, president, Superannuated Teachers of Ontario,

District 40, Brant. On my right I have Ron Harris, executive assistant, OSSTF.

We would like to thank you for providing us with the opportunity to highlight some of the concerns shared by the elementary, secondary, public, separate and retired teachers of both Brant and Haldimand counties with respect to Bill 66.

In a letter to Rod Albert, then the president of the Ontario Teachers' Federation, dated September 1988, this statement was written by Robert Nixon, Treasurer of Ontario, "The way we have dealt with pension matters in the past has been somewhat paternalistic, in my view."

In the same letter Mr Nixon states, "Dr Slater's concept of a new partnership with joint trusteeship appears attractive to us." This comment was made in reference to A Fresh Start: A Report to the Treasurer by Dr David Slater, who proposed that the pension system be at arm's length to the government with the government and the teachers' federations in a full partnership and joint trusteeship. The principals—the government and the teachers—would agree on major policy issues and the trustees would administer the plan, subject to the agreement and relevant legislation.

We agree. However, Bill 66, an Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act, falls far short of creating this full partnership.

I refer now to section 9 of Bill 66. I will not read section 9 as I am sure you will become familiar with it. But in general terms it allows the Lieutenant Governor in Council to amend the pension plan by order. It then goes on to state what cabinet may do. It also states that if an amendment to the pension plan conflicts with the Pension Benefits Act, 1987, the amendment is void. Finally, it states that the Regulations Act does not apply with respect to an order amending the pension plan. Section 9 would give cabinet the power to: first, determine how actuarial evaluations will be calculated; second, completely replace the pension plan; third, change the conditions for membership in the plan; fourth, change any plan benefits; fifth, change the contribution rate; sixth, regulate the administration of the plan; seventh, amend the plan without publishing the change because the Regulations Act does not apply.

These actions could be done without consultation, negotiation or input from plan member

representatives and without reference to the Legislature. How can there be an equal partnership if the government can exercise such powers? Why are these immense powers being conveyed to the cabinet rather than the Legislature?

With reference to subsection 9(3), cabinet should not be allowed to make regulations concerning the pension plan without publication. It is imperative that the safeguard of the Ontario Legislature against the passage of hasty or detrimental legislation be maintained. For this reason, we support the recommendation of the Ontario Teachers' Federation that these powers be held solely by the Legislature.

Section 10 of Bill 66 describes the proposed agreement for joint responsibility of the pension plan. I will not read this section but I would like to comment that even if the government and the teachers enter into a joint partnership, because of the provisions of section 9 teachers would not have an equal say to the governance of the pension plan. The Lieutenant Governor in Council would continue to control the pension plan, its membership, benefits, contribution rates and administration. How can this arrangement be considered a fair and equal partnership?

Should the teachers opt for a teacher-run plan as outlined in section 11 of Bill 66, cabinet could use the powers set out in section 9 of the act to gain control of the teacher-run plan. Cabinet could change the benefits, membership or contribution rate in spite of its being a teacher-run plan. These powers are enormous and wrong.

Section 12 allows the Lieutenant Governor in Council to make regulations. If the Regulations Act does not apply, then regulations could be passed without publication. Who will know until it is too late? The Legislature is supreme in Ontario, not the cabinet. We as teachers and as citizens of Ontario demand the opportunity to present our opinions and/or concerns when amendments are being contemplated. We want responsible government.

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The pension plan is an important asset for teachers. The teachers contribute a substantial portion of their salaries to the plan. Cabinet cannot have all the powers conveyed to it by this proposed act. There must be an absolute sharing of responsibility in all matters. We support the Ontario Teachers' Federation recommendation for a joint and equal partnership between the members of the plan and the government of Ontario.

In summary, we forward this recommendation that representatives of the government of Ontario

and the Ontario Teachers' Federation return to the bargaining table to negotiate a joint partnership form of governance for the teachers' pension plan. Catherine Eagles from Brant county will be the next speaker.

Ms Eagles: I am to deal with the one per cent pay increase that will be coming to the teachers and with the benefits laid out in the plan and the past benefits that we have enjoyed.

In December 1988 the government and OTF representatives established the actuarial surplus of the teachers' superannuation fund at \$1,885,000,000. One reason for this surplus is the fact that the contribution increase which we had in 1982-83 was excessive, and basically we have paid more money for the benefits negotiated than they have cost the government. So there is concern by the teachers at this point about another proposed one per cent increase in Bill 66 and whether or not this is reasonable. What are the benefits that the teachers will receive for this extra one per cent?

Basically, we have been told that we will receive inflation protection for our pensions and I believe that the teachers felt that was something they already had. In the Brant-Haldimand counties we are looking at teachers who will be contributing another \$1 million per year. So there is concern about what we are actually getting for that \$1 million we are contributing.

We are receiving some more buyback provisions and we are looking at improved limits for leaves of absence and breaks in service starting in 1992. But what is the cost of the plan? We believe at this point that those benefits are basically cost-neutral. At the same time, however, there are severe restrictions being imposed upon the teachers because upon returning to work after these leaves or breaks in service they must now pay by the third anniversary of their return. If they do not meet this deadline they are looking at an actuarial cost for the purchase, and we believe that this will be prohibitive or at least of a far higher nature than the three-year cost.

We have concern about teachers coming back, returning from maternity leaves and having to pay within that three-year limit. Under the old act we were looking at maternity leaves where you were allowed to pay in for not more than six months every three years. Perhaps there was a suggestion that this was the government's method of directing teachers and family planning, I do not know, but luckily it has been dropped from the new regulations.

However, when you are looking at the point where teachers must pay back within a three-year

limit, there are again financial difficulties, particularly when children are spaced closely. We are looking at increased financial responsibility at a time of decreased income.

The Chair: May I ask if you are going to leave any more moments for questions? Mr Keyes has a question and you have about three minutes left in your presentation.

Ms Eagles: No, I believe we will be able to fill up the time.

Mr Harrison: The retired teachers of Brant and Haldimand counties whom I represent firmly believe that the government of this province, and previous governments, have an obligation to raise the low pensions of those thousands of teachers who have retired prior to 1982. Sitting in the gallery this afternoon I was a bit surprised to hear that there seems to be some question, even as to this hearing, as to the fine print of this matter and whether there is indeed an obligation, morally or otherwise, to be followed.

Be that as it may, there are many, many retired teachers in this province who have received pensions of less than \$10,000 a year. I was hoping some of the committee members would be more my age so I could relate more closely to you. Did you have any teachers who ever dreamed of making a salary of \$5,000 a year? I never had a married teacher in secondary or elementary school, and they worked for \$500, \$600 and \$700 a year. My high school teachers' department heads made the grand sum in 1947 of \$3,300 a year. We are talking about another generation here. We are not talking about yuppies or people who go skiing on weekends; we are talking about people who do not get enough in their pension to live on.

In my own personal survey, I phoned one teacher. Albeit she did not have a 40-year pension, her pension last month was \$148 a month. There was no income tax taken off, thank goodness. We feel that the superannuation fund, for 68 of its 71 years of existence, has been working nicely on a pay-as-you-go basis. And teacher contributions always pay teacher benefits. Although we are the beneficiaries of the fund and not contributors to the fund, we still feel we have a share in it.

I was a bit disappointed this afternoon that the OTF people provincially didn't speak out more strongly for retired teachers, the older retired teachers, most of whom are women and many of whom need increased pensions. We strongly support the OTF position of a \$1,000 across-the-board one-time increase and \$500 for survivor beneficiaries. We feel this is the most equitable

way. It will put the money in the hands of the people who need it most, the elderly people, and it will save a lot of actuarial headaches for those who try to figure out what a pension should be for someone who retired in 1952.

I am president of my district. My elementary teachers come to our meetings. I am 60 years of age. So that, I think, sort of throws this whole matter of older pensions and low pensions into perspective. We are not dealing with people who have high incomes. They never did have high incomes and they have never had high pensions and yet they try to maintain their dignity and live in a home and maintain it. Most of them do not have husbands to fall back on and share insurance or whatever might be left from a married relationship. They were never married, in many cases. That is all I have to say.

The Chair: Thank you very much, Mr Harrison. I will have to ask you make way for the next group of presenters in that your 15 minutes is up. Thank you all very much, representatives from Brant and Haldimand.

Representatives from Bruce, please. Would you please identify yourselves and determine your order of speaking.

Ms Lowe: My name is Mary Jane Lowe and I represent the Bruce-Grey Ontario English Catholic Teachers' Association. To my left is Wayne Swanton, who is president of Bruce Ontario Public School Teachers' Federation.

We represent 900 teachers in the county of Bruce who are members of OTF and some 150 superannuated teachers presently residing in the county. We are very pleased that the committee changed its mind and has agreed to accept in record our brief on Bill 66. Last Tuesday, Ed Goetz, the president of the Bruce-Grey unit of OECTA was present during the presentation of the OTF brief to this committee. It was at that time that we first learned that the committee had changed its decision and would allow our regional brief to be presented. Mr Goetz had with him copies of our brief and left them with the clerk of this standing committee at that time.

The brief that you have before you is dated 1 December 1989 as Mr Goetz was prepared on that date to leave the brief with the committee, hoping that they would at least read it and take into consideration the concerns voiced within. Therefore, the opening and closing paragraphs of the brief reflect our understanding, on that date, that we were not being given the opportunity to present and reflect our disappointment of the situation at that time.

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While we are pleased to be here with you this evening, we are disappointed that we have been called upon to comment on a bill that clearly does not address all of the concerns that have been so clearly stated by and defended by our OTF negotiators during the biannual review and negotiation process. Teachers throughout Bruce county and Ontario are better educated on their pensions and issues involved than ever before. They truly wanted to believe the Treasurer in September 1988 when he offered to open discussions that would bring about a new partnership and reform. We are not prepared to accept a bill that is in fact more paternalistic than before and does not offer at least some benefit improvement.

Our brief has four sections: Introductory remarks starting on page 3, pension ownership on page 4, benefit improvement on page 7. Finally, the concluding remarks begin on page 8. In preparing this brief, we decided to concentrate on two areas of this complex pension issue: pension ownership and benefit improvement. While our remarks will concentrate on these areas, other issues will be addressed as well.

The Court of Appeal has clearly ruled, in its judgement on Ontario Hydro's pension plan, that the assets of a pension fund are held in trust by the fund administrator and cannot be used by the corporation for its own purposes. This government has also imposed a freeze on employers from expropriating pension plan moneys even when an actuarial surplus exists. Yet we see the government using Bill 66 as a means of taking the surplus in the superannuation fund to reduce the unfunded liability in the adjustment fund through a joint plan. This is a growing liability that the government knew about at least eight years ago and should have taken action on to correct then and not try to correct by using the teachers' assets now. We pay, we want a say.

It clearly states our belief that we have a right to make decisions about our pensions and our future. It is inconceivable that any changes in present legislation would actually transfer almost limitless power on teachers' pensions to the cabinet and not acknowledge OTF as representing teachers and their right to equal involvement in the decision-making process.

It is likewise unacceptable that there is not a mechanism through which disagreements are arbitrated. The present planned changes to a double veto will lead to a stagnant plan where only changes to the contribution rate are possible and no future benefit improvements made. We

believe that only a true and equal partnership model of governance is acceptable and that the government's complete hands-on approach to teachers' pensions must be discontinued with the third reading of Bill 66.

The benefit improvements that we seek have a 0.2 per cent cost factor, as determined by the government's Human Resources Secretariat. We therefore do not see these improvements as being excessive. However, we do see these improvements as necessary to make the plan fair and equitable.

The following are the benefit improvements that we seek:

Retirement without reduction with 35 years service, regardless of age, is a standard that is accepted in industry throughout this province. It recognizes that some are able to start their careers at an early age. It is also fair in that the teacher would otherwise contribute for more than 35 years yet still only be entitled to a benefit of 70 per cent and not an additional two per cent for each year beyond the 35. This extra contribution is actually a windfall to the plan, as greater growth of the asset is realized and there is a shorter period of benefit payment.

Retirement at age 60 with 10 or more years of service will recognize that some teachers started their careers late or have broken service. Most of the members with broken service are women who left to raise their families and should not be penalized for having done so.

Reduction factors for early retirement: The lesser of 60 minus age times five per cent or 90 minus age plus service times 2.5 per cent are more actuarially correct and do not penalize the retiree and at the same time contribute to a surplus in the plan.

Increasing the benefit of all pre-June 1982 retirees as of 31 December 1989 by \$1,000 and the pensions of survivors of pre-June 1982 retirees by \$500 would be more equitable. Being based on the best of seven or the best of 10 years of service means that these teachers have greatly reduced pensions while the funds that they contributed are actually realizing a greater gain and are contributing to the surplus in the present fund.

We would like to thank the committee once again for allowing us to make our presentation this evening. Our recommendations are found within the concluding remarks section of our written brief. We would be pleased to answer any of your questions at this time.

The Chair: Mr Swanton is not going to make that statement?

Mr Swanton: No, I will not.

The Chair: Mr Reycraft, you are on my list from the last time. Do you want to ask a question?

Mr Reycraft: I cannot very well ask the question I was going to ask the previous group.

Mr Keyes: I will ask mine.

The Chair: I was giving you first shot.

Mr Jackson: They could not get a straight answer out of their member, from Brant county.

Mr Morin-Strom: Speak for yourself.

Mr Reycraft: The previous group talked about an agreement, based on January of last year, showing a \$1.8-billion surplus in the basic plan. Do you agree with that assessment?

Ms Lowe: It was a revaluation. It was not an agreement at that point.

Mr Reycraft: That is right, it was an evaluation of \$1.8 billion that was made, and they seem to indicate their concurrence with that evaluation. I am trying to determine whether or not your group agrees with it as well.

Ms Lowe: Yes.

Mr Reycraft: Do you know whether or not evaluation was made of the superannuation adjustment fund at the same time?

Ms Lowe: No, there was not.

Mr Reycraft: Are you aware of the fact that officials in the Ministry of Treasury and Economics indicate that that fund, based on the same factors, has a deficit of \$5.8 billion?

Ms Lowe: As was mentioned in our brief, though, that was something that was seen quite a while ago and should have been addressed long before—

Mr Reycraft: How should it have been addressed?

Ms Lowe: If the government, as it so wishes to do, runs it, I think that it should have taken a look at it.

Mr Reycraft: Would you have supported increased contribution rates five years ago or eight years ago to ensure that that deficit did not occur in the adjustment fund?

Mr Mattice: I have been asked to respond. I am Burleigh Mattice, staff support.

One of the things that the member seems to neglect to consider is that the major portion of the unfunded liability in the adjustment fund is the past-service cost that existed in 1975, which no one has paid for. As plan sponsor, we believe that the past-service cost is directly attributable to government for the sponsor's obligation.

In 1975, when escalation came into effect, I had been teaching and involved in the plan for some 13 years. I have not paid anything for that 13 years because it is past-service cost. That past-service cost is one of the major components of the unfunded liability.

The second component of the unfunded liability is a result of the fact that the vesting of diversification of assets has not occurred and therefore the assets have not gained the amount that they should have.

We appreciate the fact that there may be an argument that the one per cent in 1975 was not sufficient, but we also have to say that there has been no independent evaluation or evaluation of the superannuation adjustment fund done and there has been no projection as to what the fund would have been had the unfunded liability for the past-service costs been taken care of at the time.

The Chair: Any further questions from the committee? If that is the case, that would be very helpful; we will be back on time. Thank you very much.

The group from London-Middlesex, please. I think we received this brief early. It has a cover such as this. Would you gentlemen please identify yourselves?

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Mr Pooley: Thank you. We are representing the five OTF affiliates of London and Middlesex. To my extreme right is Brian Barrett, OECTA. Next to me is Robert Feasey, Middlesex OSSTF. To my left is David Aylesworth, OTF staff, and I am Michael Pooley, OSSTF, London.

You indicated that you have received our brief and you have probably noted that our brief addresses four areas of concern: the issue of government control; the issue of equal partnership; benefit improvements; and the issue of purchase of credits.

At this point I am going to turn our presentation over to Robert Feasey from Middlesex.

Mr Feasey: We, the teachers of London-Middlesex, take serious exception to sections of Bill 66, in particular those dealing with control, partnership, benefit improvement and purchase of credit.

Section 9 gives cabinet unprecedented powers of control—amendment, regulation, membership and benefits—which directly circumvent the democratic process. It appears ludicrous to the teachers that we are directed by the government of Ontario, through its Ministry of Education, to teach the principles of a democratic society and

laud the benefits it provides but that the same government wishes to pass Bill 66 and deprive the teachers of this most basic protection.

We strongly urge the committee to recommend modification of this section to reflect the present structure with regard to establishing true equal partnership.

At this point I would ask if any of my learned colleagues would care to add any examples to this. If not, I will continue. Thank you.

Article 10 alludes to joint management. However, section 9 retains cabinet power to determine actuarial assumptions that rescind, eliminate or modify benefits. This leaves the concept of joint management in serious question. It is entirely possible for the cabinet, in isolation, to make the final decision. Under this threat, it is most difficult to think as an equal or to believe any negotiations are in good faith.

Once again, we recommend change in the present government structure and that the partners resume negotiations in the light of establishing bona fide joint management.

On the question of benefit improvement, we would request some extras be added for increased contribution. No one can argue with paying more to receive more. However, to increase contributions and see no corresponding benefit leaves a very serious doubt as to the sincerity of the request to contribute more.

We feel 35 years should meet the requirements for a full pension. Some teachers employed in the late 1950s and early 1960s were as young as 18. With 35 years service, this makes them 53 and unable to qualify for a full pension with this type of injustice unaddressed.

For those who retired prior to 1982, we feel an increase to their pension, and not a one-time payment, would correct the problem of not being able to accurately define the records.

A large number of teachers, particularly women, will be affected by sections dealing with the purchase of credit. As many take a break to raise a family, this section seems to negate the government's statement on the equality of women. By denying occasional teachers, mainly women, the right to contribute and by putting time limitations on the back increases the hardship of a young couple trying to raise a family and purchase credit in this fund simultaneously. It would be much more equal for this group to be allowed a time payment plan.

To summarize, we would submit the following recommendations: Establish joint sponsorship; resume negotiations between the government and OTF to ensure the reality of joint partnership;

avoid legislating excessive power to cabinet; mandatory contributions for occasional teachers; and remove the time lines for the purchase of credit.

I would like to thank the committee for allowing us to present this brief on behalf of the teachers of London-Middlesex and urge you to seriously consider the recommendations we have put forward.

The Chair: Thank you, Mr Feasey.

Mr Pooley: Does either of the other gentlemen have any additions?

Mr Barrett: If I may, I would just like to add one point regarding section 9 that I am sure the members of all parties on this committee are probably getting tired of hearing—it has been said three times and we have only been here a little over half an hour—in terms of the enormous or excessive powers section 9 gives to the cabinet.

I think this issue is perhaps the crux of the matter in many respects, and I would think, as I look around the room and I see opposition members and members of the Liberal Party who are backbenchers, that perhaps these people would agree with us, with the OTF position, that such powers to the cabinet and the cabinet alone—I will not read out all of section 9, it has been read to you many times, but if you look at it slowly and read it and digest it, they are excessive powers. I might say that it is going back 100 years and does not reflect what we call responsible or democratic government but more the powers of the Family Compact of the 1820s and 1830s in this province.

I would ask, I guess on behalf of my two cents' worth here, that with regard to that section 9 this committee take a good hard look at it. We use the words "political eunuchs of the Legislature" in our brief, and that is strong language, but it is no stronger than the language of section 9. Thank you.

The Chair: Thank you, Mr Barrett. Mr Reyecraft, do you have a question?

Mr Reyecraft: Perhaps either Bob or Brian could respond to my question. It deals with section 9.

The government has indicated that its preference in terms of governance of the plan is the partnership model, and there is some description of that in section 10 of the Bill. I am not sure if you have it before you or not, but section 10(3) of the bill specifically states,

"If the Lieutenant Governor in Council enters into an agreement as described in subsection 1"—that would be a partnership model between

government and teachers—"the agreement may provide that the Lieutenant Government in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement."

It is the clear intent of the government that if a partnership model is adopted, the powers that section 9 would accord to cabinet would be curtailed; indeed, withdrawn. I am not sure if that is clear, given other presentations we have heard this evening.

Mr Pooley: If that indeed is the case, we would have no argument with that. I think our argument is with the excessive power of cabinet.

Mr Reycraft: The powers that are accorded to cabinet, as I understand the bill, would only vest with cabinet if the government-sponsorship model was adopted and that is not our intent. That is not our preference.

Mr Morin-Strom: My understanding of the government amendments we have seen to date does eliminate section 9 out of the joint control model. If the government has amendments that are going to eliminate section 9 from the bill under the joint control, it should table them so that we can all see them.

Mr Reycraft: Subsection 10(3) is the clause that restricts section 9.

Mr Morin-Strom: I do not see an amendment which eliminates section 9. Subsection 10(3) says you can do that if you get an agreement, but your proposal that is on the table right now in terms of a package for the joint control does not include the elimination of section 9.

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Mr Reycraft: It has been indicated before that trying to deal with three models as options all at the same time does present some complications, and perhaps this is one of them, but I have indicated clearly, I think, what the intent of the government is. It is the intent that those powers would only be vested with cabinet if the government-sponsorship model was adopted.

Mr Jackson: Then am I to interpret, Mr Reycraft, that you would be willing to change the word "may" to "shall," which only a government amendment will allow for, when you read subsection 10(1)? It makes a big difference.

Mr Reycraft: If there is confusion about what is intended, we will certainly try to clarify.

Mr Pooley: I thought this was our chance to present. Is there a chance for debate?

The Chair: I was just going to say that. I feel that we are into clause-by-clause and I think we

are questioning witnesses. I thought there might be some clarification coming quickly, but it does not seem to be.

Mr Jackson: Well, the deputants asked a question of Mr Reycraft, who provided a certain assurance of his interpretation. He clearly indicated that as the bill is written it is "may." We all know the understanding of what "may" means and I asked him if he was prepared to entertain the "shall." It was a simple question of clarification.

The Chair: Yes, Mr Neumann.

Mr Neumann: I thought the delegation requested that its time be used for its presentation.

The Chair: I have the same before me. Mr Jackson, are you asking the delegates a question at all?

Mr Jackson: No. I was asking, through the chair, a question of clarification based on the response they gave. My clarification flows from a question that was raised.

The Chair: Do you have that now, Mr Keyes? Did you have your hand up for a question?

Mr Keyes: I just want to reiterate—

Mr Jackson: Excuse me. You cut off Mr Reycraft before he answered my question, which is your right, but do not tell me that the matter has been clarified. It has not. If you wish to proceed with Mr Keyes, proceed. Do not put on the record that it has been clarified.

Mr Neumann: You are taking up the time of the delegation.

The Chair: I am sorry. Mr Reycraft has had two or three times to explain it and I thought he had done so, but if he has not satisfied you, maybe you can see him later. Mr Keyes.

Mr Keyes: I was merely going to add as clarification an assurance that there is no intention of giving the cabinet powers to make amendments that are not part of an agreement reached between the government and OTF as a result of the pension plan board.

Mr Aylsworth: From what the language says now, I think there is nothing in section 9 that would preclude the cabinet from acting unilaterally outside the agreement. Further, I would point out that OTF in its presentation proposed language for an altered version of section 10, which would permit the partners to amend the agreement as opposed to the Lieutenant Governor alone.

Mr Keyes: May I just clarify that I have asked for a legal opinion from solicitors for the

Ministry of Education on the very point, so we do not waste a lot of the valuable time of the deputants on this particular issue. I have assured them I will have a written legal opinion from our solicitors on that.

The Chair: We will get that tomorrow, will we?

Mr Keyes: Yes.

The Chair: Are there any further questions of the London-Middlesex delegation? Do you have another question, Mr Jackson?

Mr Jackson: No. When you are done, I still want my clarification.

The Chair: Mr Reycraft, are you going to be able to provide a further clarification?

Mr Reycraft: Mr Keyes has indicated that we will provide a written clarification tomorrow, and I think your advice that we should use the time for discussing with deputants is well placed.

The Chair: The delegation from South Niagara-Lincoln, please. Members of the committee, it is the yellow brief we received last week. Please identify yourselves, introduce yourselves as spokespersons. That would be very helpful to Hansard.

Mr Connors: My name is Stan Connors and I am representing the Ontario Secondary School Teachers' Federation from the Niagara region this evening. I would like at this point to introduce the other members of the group who are here with me this evening representing the other teachers' affiliates of the Niagara region. They are John Watt of the Ontario English Catholic Teachers' Association; Shereen Osborne of the Federation of Women Teachers' Associations of Ontario; Danielle Laverdière of the French teachers' association—that comes after much practice—and Jim McMahon of the Ontario Public School Teachers' Federation. We represent approximately 4,000 teachers in the Niagara region.

Before I begin I would like to point out to the committee that on page 5 there is a typo in paragraph 2, line 5; that should be 0.7 per cent, which comes to \$123 million of an estimated \$14 billion, I have been told.

I would like to thank the committee for the opportunity to present the concerns of the teachers of the Niagara region on certain portions of Bill 66 this evening. Unfortunately for the committee, we will probably plow over ground that has been done a number of times. Copies of our brief have been sent to you. I note you received them. The brief contains a number of points which have been dealt with in the OTF

brief and other briefs. However, there are some areas we would like to highlight that hopefully would show the committee how concerned we are with the effects of this bill as people, not as payees into a plan. I call on John Watt to take over.

Mr Watt: As is mentioned in our brief when referring to comments made by the Treasurer of Ontario, it was our hope originally that real negotiations would take place in this process. Instead, we are looking at half-baked legislation that will probably never rise properly because it does not have the right ingredients in it.

Very simply put, we are trying to pass legislation before the process has been completed. I think there is very strong evidence that type of thing has shown up very well in the withdrawal of the original legislation and its last minute replacement with Bill 66. There is no vehicle built into this legislation to allow what should be a 50 per cent partner any involvement in the management of the funds. Our recommendation 1 is very basic, that each partner have an equal say in the management of the moneys in the teachers' pension fund.

Also, as mentioned in our brief, disputes at some time are inevitable, especially when there is so much money involved. Dispute resolution in the case of this legislation has been taken away both from the legislators and their partners in this plan, the teachers. There has to be a method of solving disputes other than by decree of the Lieutenant Governor in Council. As I heard a while ago, the replacement of the word "may" with the word "shall" would certainly help in that direction. Our recommendation 2, as stated in our brief, is that an external third-party mechanism be utilized to settle disputes in the running of the teachers' pension plan.

Ms Osborne: Who is to control the pension plan under Bill 66 is a question of vital importance to the teachers of this province. The answer to that question raises fears for the future of our pension plan. The control under Bill 66 may rest entirely in the hands of the Lieutenant Governor in Council. This means that not only will the teachers not have the right to have a say in their own pension plan, but the right of their elected legislators to have a say in the plan structure, benefits or contributions will be given away.

This also means that the cabinet, not the teachers, not the government nor the opposition, whose purpose it is to be the conscience of the government, will have a say in the operation and maintenance of the plan. That leaves us, the

teachers of Ontario, with absolutely no safeguards over our hard-earned pension dollars. There will be no one left to question any actions taken with the money for either the teachers or the people of Ontario.

We have some specific fears for the future of our pension plan if this government allows the Lieutenant Governor in Council to take over sole control as proposed in Bill 66.

First, it allows for Bill 66 to be rescinded at any time so that the Lieutenant Governor in Council may replace it with any plan he wishes. Second, there are no guarantees that the plan of the future will possess the same level or quality of benefits as now proposed. Third, surpluses generated by the plan will be under the control of the government and not the teachers who contribute 100 per cent to the plan. Fourth, the reality is that there could be not just an erosion of the plan as it currently is proposed, but that any improvements for the future will be impossible.

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The courts have found that appropriation of the surplus in a pension plan by an employer was illegal in the case of Ontario Hydro and Dominion Stores. If private pension plans are dealt with in this way, so too should the teachers' pension plan.

Many of the problems we see with this legislation could have been avoided had there been an ongoing negotiation between the government and the teachers with a report to the plan's participants every two years giving the agreed upon proposals, rather than this present undemocratic method and all the injustices that pertain to it.

I would like to speak to two recommendations in our brief. Recommendation 3 is that control of the teachers' pension plan rest with both partners to the plan, with final control for any changes agreed to by the partners to remain with the partners. Recommendation 4 of our brief is that full and meaningful negotiations be an ongoing process for both parties to the plan, with a report and recommendations to the participants every two years, and any disputes to be settled by third-party intervention at the request of one of the parties.

Mme Laverdière : Nous aimerions voir des changements dans la partie des bénéfices de la loi proposée. Nous demandons des changements au nom des professeurs qui ont pris leur retraite avant 1982. Ces professeurs ont essayé sans succès de faire changer le calcul de leur pension en prenant comme base les cinq meilleures années plutôt que les sept meilleures années.

Depuis 1982, le coût de la vie a augmenté trop souvent pour ces professeurs retraités.

Vivre d'une rente, pour ceux qui ont pris leur retraite avant 1982, devient de plus en plus difficile dans ces circonstances. Plusieurs de ces professeurs sont parmi les 30 pour cent qui ont une pension de moins de 10 000 \$. Pour ceux qui ont survécu à leur conjoint retraité avant 1982, la situation est encore plus pénible. Même avec la pension du gouvernement fédéral, la qualité de leur vie n'est pas très confortable.

Vu l'augmentation des taux d'intérêts depuis 1982, il y a maintenant suffisamment d'argent disponible dans le fonds de pension des professeurs pour augmenter la rente de ceux qui ont pris leur retraite avant 1982 par 1000 \$ et celle de leur survivant par 500 \$. Ce montant est moins de 0,7 pour cent de l'argent dans le fonds de retraite, ce qui est moins de 0,7 pour cent du revenu total disponible dans le fonds pour améliorer l'existence des professeurs retraités qui ont donné si généreusement de leur temps et de leurs talents pour les étudiants de l'Ontario.

Pour faire suite à ceci, il y a la recommandation 5 : Que les professeurs qui ont pris leur retraite avant 1982 reçoivent une augmentation de 1000 \$ à leur pension ; et la recommandation 6 : Que les survivants des professeurs qui ont pris leur retraite avant 1982 reçoivent une augmentation de 500 \$ à leurs bénéfices de survivants.

Mr McMahon : Our next two recommendations deal with what we refer to as people issues rather than economic issues. I think we have all seen in the last 16 months that the economic issues and the actuarial issues depend on which side you are on, and I do not think we have come to any agreement on those. They can be used to create a lot of things. Our recommendations 7 and 8 deal with the matter of long term disability and post-1988 retirees.

Our recommendation 7 is that long-term disability recipients be given every opportunity under section 109 of schedule 1 in Bill 66 to maintain their eligibility in the plan without creating undue financial hardship.

Basically, we would like to see a softening in the language of the proposed legislation, which would allow payment of the contributions required to provide escalation of the salary level, as it is for every other retiree in the superannuation fund, to be a "due on" rather than a "must be made by." We see the due-on provision in that clause as causing financial hardship for people on long-term disability without an escalation factor. A "must be made by" payment—a little more

flexibility in the scheduling will give these teachers a little break in the funding.

Those presently on long-term disability who have no source of funding to make up the contributions for escalation of the salary level should have their pension red-circled as being part of the previous pension act, which they of course were. This would help to avoid placing undue hardship on these teachers. These people worked long, hard years. They may have been teachers of many of the people in this room. If Bill 66 indicates that the government wants to become fully involved in pensions, then it should look at the past as well as the present and the future.

A debt is owed to the teachers who were forced to retire by dint of age or who were disabled on the job. They must know that their work was considered important enough to merit consideration by this committee and this bill, and the same thought should be maintained so the present-day teachers do not suffer in the future.

Recommendation 8 again refers to post-1988 retirees. We are concerned that teachers presently teaching in the province not end in the same straits that post-1982 retirees have been put into. They cannot convince anyone that they should be considered for reduction to the best five years, still being on the best seven. We wish any positive benefits that are negotiated in the future to be given to all teachers so that they may be rewarded as well for their useful service to the citizens of Ontario.

Again, reviewing recommendations 7 and 8, long-term disability recipients should be given every opportunity to maintain their eligibility for the plan without undue financial hardship and post-1980 retirees should receive the advantage of any future financial or benefit change to Bill 66.

Mr Connors: We would like to see Bill 66 maintain the respect for retirees that its predecessor had and allow for those changes to make the life of retirees fulfilling. We support the points put forward by the Ontario Teachers' Federation. We would like to see dispute resolutions similar to those which we are granted by Bill 100, the School Boards and Teachers Collective Negotiations Act. We would also like a very fair deal for the people who retired before 1982 and a sense that those who retire after 1988 will be dealt with equitably.

Behind all this material we have presented is a concern about people. The dollars are not as important as what happens to the retirees when they start receiving those dollars. I do not like

that phrasing. If retirees have to continually look over their shoulders at government actions that may affect their pensions, increases in the cost of living and things of that nature, the superannuation plan will have failed to provide what its founders intended it should do.

The Chair: Thank you, Mr Connors. We have about one or two minutes; a very short question, Mr Keyes.

Mr Keyes: Yes. I have not had a chance to ask any other groups this, so you are the ones I will direct it towards, and that is why the Superannuated Teachers of Ontario members for some years have tried to have pre-1982 retirees' pension calculated on the best five rather than the best seven. Now in these briefs we suddenly have switched from that philosophy, which they still espouse in their newsletter, to saying \$1,000 for all pre-1982 retirees. Why have they made the switch?

Mr Connors: One answer I could give, not speaking for members of STO, because I do not know them that well, is probably out of the sense of frustration that the campaign for the best five had because they could not find anyone to listen to them, the amount of the campaign, and probably figured this was a better way through because it put it more into hard dollars.

Mr Keyes: I guess the question is, is it the Ontario Teachers' Federation that put it forward or STO? STO, in its most recent newsletter to me, a participating member, still says, "We will continue to press for the best five." The only other answer I thought we might have heard was that this would have been a method of trying to provide for the low pensioner who was the oldest pensioner; that he would get more, in a sense, for upgrading his pension than the more recent retiree, and that would have been a reasonable argument for him to use. I want to just remind the group that the government did, in 1987, do an adjustment to teachers' pensions and it did it on a graduated scale based on need, but I am surprised to see this change.

The Chair: Does anyone from Niagara want to answer Mr Keyes's question or does anyone in the room want to answer very briefly?

Interjection: I think, sir, you have actually answered the question yourself, that this gentleman did say there was a sense of frustration and the Ontario Teachers' Federation was dealing with STO, and this was seen as a way that perhaps we could get some movement from government at this time.

The Chair: Thank you all very much. You have presented yourselves very clearly.

Now, would the members of the Ontario English Catholic Teachers' Association would come forward, please.

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Mr Keyes: Madam Chair, there is a clarification I would like to make which would not take anyone's time as they are being seated, and it helps Mr Morin-Strom when he suggested we make an amendment in that subsection 10(3) for the word "shall" instead of "may." I want to caution against that. If you did that, it would force the teachers into the partnership role. I do not think that is what you intended and it is not what the government intended.

The way it is worded, with the "may," is that it may provide for a partnership, and if there is a partnership, there is definitely a curtailment on the powers of cabinet. They cannot do everything that you see in section 9; it is only those things that are shown in 9 that can be done by cabinet, through regulation, based on the agreement reached by both parties. Again, I am giving you a written legal briefing on that tomorrow, but it would not be appropriate to change it to "shall."

The Chair: Ms Lennon, would you like to begin by introducing the people who are with you tonight?

Ms Lennon: Yes, I would be very happy to introduce the people who are with me. To my extreme left is Michael Cote, who is the first vice-president. To my immediate left is Suzann Jones, who is our OTF table officer, and on my right is our deputy general secretary, Terry Mangan. He has been working with the biannual review committee of OTF throughout all of the last 16 months.

We are very happy to have this opportunity to present our brief to you on behalf of the 29,000 statutory members of OECA.

The Chair: Do we have a copy of this brief? We do not seem to have it. Have they been delivered to us?

Ms Lennon: I think they are sitting in those boxes and they have been here since last Monday.

The Chair: Last Monday?

Ms Lennon: Last Tuesday or whatever day we were—

Mr Keyes: Everything in this building is very secure.

Mr Keyes: How about highlighting the points that would be different from the 22 briefs I have read?

Ms Lennon: We will try.

The Chair: How are you going to take us through this then? You are not going to read from this brief.

Ms Lennon: I am going to read some from this brief, but I am certainly not going to read all 59 pages. I will try to refer you to page numbers and help you out as we go through.

The Chair: I am very sorry that happened. I guess somebody did not get the message.

Ms Lennon: That is okay.

The Chair: At least you knew where they were. That was very helpful.

Ms Lennon: I must say that earlier today I did have a little heart failure wondering just what did happen to those boxes because I knew we brought them down but I did not know what happened to them after we left last week.

I would also like to point out that we have 2,500 occasional members who belong to the Ontario Catholic Occasional Teachers Association, and I want to reiterate from the beginning that our brief is in addition to and in support of the position put forward by the Ontario Teachers' Federation.

I would like to begin with the section on page 4 that says "How much is enough?" The members of the Ontario English Catholic Teachers' Association are ready and willing to pay their share of the pension costs. They are not, however, prepared to overcontribute in order that a large actuarial surplus may be declared. The assumptions are extremely important.

For instance, in November 1988, the Human Resources Secretariat told the parties that a return of 7.75 per cent would require a contribution of 9.19 per cent, that a return of eight per cent would require a contribution of 8.73 per cent and that a return of 8.25 per cent would require a contribution rate of 8.29 per cent, which demonstrates the need for agreement on the assumptions. You will find our recommendations on this matter at the bottom of page 5.

On the matter of trust, control and partnership, the provincial executive of the Ontario English Catholic Teachers' Association endorses the concept of a teacher-controlled pension fund. This association is looking forward to a period of joint control so that we can learn from the experience of government representatives some of the intricacies involved in the operation of such a large plan.

This association finds the form of the three options, as written, to be without merit. Even if the government insists on retaining control under

section 9, this association sees no reason for either the number of representatives to change or the process presently being used to change. The Teachers Superannuation Commission has worked successfully with equal representation for many years.

Until a partnership is obtained, the only option acceptable to OECTA is the maintenance of the status quo, with allowance for proper investment procedures. However, despite the present form of the three options presented, we favour a partnership. In order to move the process forward as quickly as possible, OECTA supports the amendments proposed by OTF to section 10 of the act, but I would like to underline that the Ontario Teachers' Federation must be fully involved in all forms of investment actively involving fund money.

Our recommendations on the trust, control and partnership can be found on pages 9 through 11. I am not going to take time to read any of these recommendations, except on page 11, there is a split there, if you will look. If recommendations 3 and 4 are not possible, then we would strongly recommend the Teachers Superannuation Commission be maintained until a partnership agreement is reached and that the Teachers Superannuation Commission be allowed interim investment capabilities.

On the issue of dispute resolution, which is where I probably will repeat what others have said, it is a given that from time to time partners will disagree. As negotiations with the government continued last fall, teachers began to believe that the government hand had been truly extended in partnership and teachers began working on a proposal which might be used on those probably rare occasions where a true disagreement might exist.

OECTA believes that every real partnership must have a means of dispute resolution in order to maintain a healthy partnership. We have included on pages 12 to 15 the process and the steps that OTF has taken to try to work out a deadlock-breaking process. I will not read that, but I certainly hope that you will read it to see all the efforts that were put in.

Internal forms of dispute resolution are also required. Section 86 may require more than one appeal level, the final to be chaired by an impartial chairperson. The Ontario English Catholic Teachers' Association believes that the proposal put forward by OTF would have been of value to the parties. In the interest of partnership, this association strongly supports the following

OTF amendments, which are found on pages 17 to 19.

Should a partnership, either negotiated or legislated, not be possible at this time, OECTA recommends that the Teachers Superannuation Commission be retained with interim investment abilities.

On the issue of sponsorship, OECTA commends the government of Ontario for stating its intention to pay the existing unfunded liability for the teachers' plan. Shortly after 22 September 1988, the teachers began searching for ways and means whereby they could accept an equal responsibility for the plan, and a major potential centres around the fund. Although the proposed legislation allows for a one per cent increase by government and teachers before assistance is provided, both proposals are devised to help teachers bear their share of the risk in an affordable manner. The association endorses proposed clause 25(a), providing the Ontario Teachers' Federation amendments are included.

Who speaks for the teachers? It is imperative that the Ontario Teachers' Federation be legally empowered to act on behalf of all members of the Ontario teachers' pension plan.

Whose money is it? A 1969 judgement in the House of Lords tells us that pensions are regarded as earned income, with amounts paid into the pension fund being delayed remuneration. There is a court case that is cited, and I will not read that either.

Great sums of teacher moneys are thus delayed remuneration. Presently, a total of 15.8 per cent is placed in the pension plan. The government proposes 17.8 per cent. Teachers obviously have a financial interest in the wellbeing of this plan. It is imperative that teachers and government agree on such major issues as assumptions, modification of benefits and contribution rates. It is equally as imperative that the government deals with its teachers in a fair and equitable manner.

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Going concern valuations of the teachers' superannuation fund and the teachers' superannuation adjustment fund should take place as of 31 December 1989. Further, a similar valuation of the combined fund should take place as of 1 January 1990 so that we will know we are comparing apples to apples. If an actuarial deficit is discovered in either fund, as of 31 December 1989, the province should be required to amortize the payment over a period of years and a separate agreement should be drawn out for this purpose.

It is the position of OECTA that usage of plan surpluses must be by mutual agreement. This being stated, the Ontario English Catholic Teachers' Association is willing, with a partnership agreement and the proposed benefit improvement package in place, to allow the government to apply the surplus in the main fund against the unfunded liability in the adjustment fund as of 31 December 1989. OECTA's recommendations can be found on page 27.

We have some concerns around the limitations of the Income Tax Act of Canada. Teachers and government share the belief that parental presence with children during the very early years can be most beneficial to the children, the family and society in general. To this end, teachers and government have reached an agreement on subsection 93(14) which reads, "Subsection 13 does not apply with respect to an absence or a break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age but no member may purchase more than two years of credited service in respect of one child, or if more than one child is born or adopted at once, in respect of such birth or adoption."

It has come to our attention that proposed amendments to the Income Tax Act of Canada may seriously limit teachers' ability to purchase credited service for leaves taken under section 93. OECTA believes that pension credit for leaves taken in accordance with subsection 93(13) and subsection 93(14) should not be curtailed by possible changes in the Income Tax Act, and we would recommend that leaves taken in compliance with these sections be exempted from limitations of the Income Tax Act of Canada.

I think this will be a new section from any other group, and this is the issue of the designated schools. For some years, OECTA has been attempting to obtain justice for many of our members and former members. Prior to the passage of Bill 30, An Act to amend the Education Act, teachers in grades 11, 12 and 13, and in some cases grades 9 and 10, at Catholic high schools were considered to be working in private schools. Private schools had to receive designation by the province in order that teachers in that school could participate in the teachers' pension fund. Designation, which began only in 1957, meant that the school was considered by the province to meet certain educational standards required in Ontario, and therefore teachers

in designated schools had the right to participate in the fund.

Some individuals who worked in these schools are still teaching, and while a considerable number are members of OECTA, many are members of other teacher affiliates in Ontario. Individuals who taught in these schools have received treatment which is patently unfair. Without the appropriate corrective legislation, it is unlikely that these individuals will be forced to effect change through the Ombudsman and/or the Human Rights Commission.

I invite you to read the following actual cases, which you will find at page 32 and 33. We believe those individuals who taught in previously nondesignated schools should be allowed to purchase credit in the fund for those years in a manner similar to that allowed the teachers in private French-language high schools at the time the French-language secondary schools were created.

Affidavits have been provided to the Ministry of Education indicating that the schools listed satisfied the criteria set forth by the Education Act. OECTA therefore recommends the standing committee on social development recommend that individuals working in Catholic high schools prior to designation be deemed to have been employed in education within the meaning of the Education Act and that subsection 98(1) be amended to allow individuals who worked in nondesignated Catholic secondary schools to purchase credited service for that period of time.

On the issue of benefits, the Ontario English Catholic Teachers' Association recommends particularly the inclusion of the 35-and-out and the improved pension for pre-1982 retirees. These benefits can be included for a minimal past-service cost and at no future cost to the plan.

I will stop in my presentation at this point. At the end of our brief, you will find appendices A and B, as well as an executive summary on page 44 and a list of our recommendations beginning on page 47.

I would like to thank you for your attention and your time. We would be open for questions.

Mr Reycraft: Two questions: The first deals with the second paragraph on page 26 of your brief. I gather what you are saying there is that the surplus in the teachers' superannuation fund belongs to the teachers, the deficit in the adjustment fund belongs to the government. Is that in essence correct?

Ms Lennon: Yes.

Mr Reycraft: On what basis do you say that the government is obligated to amortize the adjustment fund deficit?

Ms Lennon: I think that the government has had control of the funds for the last number of years. I am going to ask my colleagues to comment further, but so long as they were in control and had been aware of the growing deficit, I think that they must take responsibility for it. If we had been equal partners in it up to this point, then we would feel that we would have had some share of the responsibility.

Sue, would you like to comment further? You have been in on all the discussions.

Ms Jones: Sure. I think there are a few areas that should be clarified. Any deficit that occurs in the adjustment fund we understand totally on the basis of merging those two funds and needing to fully fund what used to be an unfully-funded plan. When the plan was set up as an adjustment for inflation in 1975, as another person mentioned today, the one per cent was an estimate for what we call "pay as you go," which is I pay and somebody else goes. I am still teaching.

At no time in those discussions was there a hint that there was an intent to fully fund that adjustment fund the way that the main fund is funded. So any deficit that is being discussed is the result of the merging of the two plans, the adjustment fund—"pay as you go"—and the main fund which always had to be actuarially funded based on salary assumptions, investment assumptions, as well as real rate of return and inflation. That is why.

Mr Reycraft: We are not the only province that has run into this problem with indexation of public service pensions. Have any other provinces undertaken similar reviews of their indexation plans and agreed to fully fund them and leave the benefit at 100 per cent inflation-proofing?

Ms Jones: I do not know but I assume, Mr Reycraft, you may.

Mr Reycraft: I am aware of at least one province that decided, instead of fully funding the adjustment fund, to reduce the benefit to the consumer price index increase minus three per cent. I believe that was Quebec.

Ms Jones: I would not think that you are suggesting that we follow the Quebec model on very much, but I do think that you have to recognize that we entered into these discussions. I would say that Mr Nixon's letter is probably the most quoted piece of correspondence you people have heard, but it was through those discussions that the government expressed the desire to merge the two plans. It was through that discussion and that desire that other rules then apply, which means that the adjustment fund

must be fully funded and it was the government's decision that, in order to do that, it would accept responsibility.

Mr Reycraft: I do believe the government sought the advice of the Ontario Teachers' Federation as to whether or not it would be appropriate to fully fund the plan or to reduce the benefit and the advice received was the former rather than the latter.

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Ms Jones: I am sorry, Mr Reycraft. I was never at a meeting where the discussion was, "We'll reduce your benefits." You may have been at one but I was not.

The Chair: Mr Jackson, do you have a question?

Mr Jackson: I was just trying to determine whether or not I was to take comfort from the treatment by the Liberal government in Quebec versus the Liberal government of Ontario.

Mr Reycraft: I am not sure it was the Liberal government; I think it was the Péquistes.

Mr Jackson: My question deals with the items you have raised on dispute resolution. I am interested in the notions that have been shared with us earlier today as well about authorizing the chair to specify a route to closure of various problems. Can you expand where models may exist that would follow the one that is being suggested, the ones that are close to it just so I could maybe pursue some further questions?

Mr Mangan: I am sorry, I do not quite understand.

Mr Jackson: The dispute resolution model as proposed by the chair's selecting various tracks but not acting. Specifically, you deal with them not acting as an intervener or pre-fact-finding functions because it may in some way damage their potential neutrality in selecting the final track. I wanted to get a sense from you in the proposals from OTF which we received earlier and which you again enunciated as a formula for dispute resolution. Could you explain to me where you came up with it, or are there examples of its use, just for the benefit of all of us?

Mr Mangan: Thank you very much for that explanation. We did try very hard to look at other models that were in existence but did not find very many. We then went to various individuals in the province who are well-known in the area of dispute resolution and sought their advice. In dealing with these individuals and the various models that were available to meet our proposal based upon that background, the idea was that the

chair would be there to assist the parties but would not really be in a position to actually make the decision. Somebody else could actually handle that portion of it and the chair would be in a position to actually provide the form of resolution that would be eventually effected.

We thought that the knowledge or the lack of knowledge as to how the process might go would have an affect on the parties, more of an affect than would necessarily knowing in advance the particular route to finality. It would have the parties work harder at achieving a settlement.

Mr Jackson: To your knowledge there does not exist a model similar to this? Have you had any opportunity to bounce it off the government in terms of the model, and what reaction did you get?

Mr Mangan: The model has been discussed with the government and it comes down, again, to the—

Mr Jackson: How hard did it bounce?

Mr Mangan: Somewhat of a thud. The argument came back to the sovereignty of the government and that—

Mr Jackson: In the context of joint partnership?

Mr Mangan: Yes, it was not possible to have the—

Mr Jackson: I wonder how this language was being connected during these discussions.

Mr Mangan: It was not possible to have a third party make that type of decision at that point in time.

Ms Lennon: I think that one of the problems throughout all of this has been that the government has not been able to separate its role as legislator from its role as employer in terms of our pension plan. It seems to me that yes, as legislator for the province, the government does have a definite role of safeguarding all of the taxpayers in the interests of everyone.

But when they are into a partnership in our superannuation plan or our pension plan, they are there playing the role of employer, and when they are there they are really no different than Conrad Black was with his workers or Dominion Stores with its workers or anyone else. And they will not be giving away the control of billions of dollars of money to a third party to arbitrate.

Because that is the whole fund and the whole fund will never be up for grabs. All that will ever be up for grabs or up for dispute would be perhaps the difference in whether the contribution rate should be changed by one per cent or 0.5 per cent. Arbitrators make decisions involving

those amounts of money every day and we accept it in our society. The government accepts the use of an arbitrator to decide how it will deal with employees, certain groups of employees. So I think that there is a distinct difference in the two roles, and in my mind the government has not seen the difference in its role as legislator or in its role as employer.

Mr Jackson: I guess that is why, although I have some sympathy for your recommendation, the dilemma you just described is a fairly constant dilemma for every elected jurisdiction in North America, if not universally. I guess I am concerned as to why there has not been an evolution of this type of model in an example that you can direct us to. Do you see where I am? I do not in any way want to suggest that your arguments are not valid. It is just that these conditions exist rather extensively around North America.

Ms Lennon: I am going to let my colleague, who is much more lucid than I am, talk.

Ms Jones: I think one of the problems that occurs, as Ms Lennon mentioned, is the sense of sovereignty. We refer to it often as the chair of God because that person would have to satisfy a lot of criteria to be selected as neutral chair.

The reason we suggested the chair serve as a decider of how decisions would be made was from the standpoint that we did have agreement with the government representatives that perhaps a neutral chair would facilitate good partnership. It was from that concept that this person, as neutral chair, might understand the partners well enough to anticipate which form of dispute resolution would work. We suggested that maybe this would be the ideal person to make that decision.

With regard to models, I have negotiated and been on strike. Arbitration was selected. It was offered and selected by our teachers for a major contract, a good \$1 million. The amounts of money in arbitration are not unusual even with elected school boards and teachers, so we saw that perhaps this would be a worthwhile way of a person determining how to settle the dispute.

It may turn out that the chairperson would say, "I think that certain things could be postponed, as dispute, for another two or three years." It may be that the chair would say: "Listen, let's discuss this. You're not talking to each other or you're not hearing each other." Or it may be that the chair would say: "This has gone on long enough. It's poisoning the relationship. Let's send it to a third party."

Mr Morin-Strom: Is it not the case that the conflict of interest of the government in fact goes beyond being employer but to the fact that the government is the source of the investment? The investment is really a source of low-cost financing, and has been historically, for the operation of all aspects of governmental business in Ontario. As long as we have clauses in the bill which prevent the fund from being managed in a fiscally responsible way according to the Pension Benefits Act and the exclusions are there and the government insistence that the investment will be nonassignable and nontransferable, this fund is never going to achieve the kind of returns that we know are achievable in the real marketplace of pension fund management.

Mr Jackson: Marginally greater risk.

Mr Morin-Strom: No, with less risk. The statements that have come before us are that the risk is greater when all of your funds are put into one type of investment. A diversified portfolio has lower risk and higher expected returns on the investment.

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Ms Jones: That was the problem until this brave new world. That was the problem for the past—I am not old enough—70 years. We have no handle, for example—back to Mr Reycraft's question—on how the money in the adjustment fund has been invested. I do not believe it has been even put into debentures yet. In the new partnership, if teachers were involved as partners in some of that investment, rather than government determining exactly where it was going to be invested, then we would feel a little more secure.

The Chair: Thank you very much, Ms Jones and Ms Lennon.

May I have the group from Peterborough, please. Mr Barbarto, I understand you have a video to show us?

Ms Coprian: Yes, but that is a little later in the presentation.

The Chair: So are you going to be speaking for your full 15 minutes? Is that your intent?

Ms Coprian: Yes, I believe so.

The Chair: Okay. Then we will not have time for questions in this presentation.

Ms Coprian: I am Velma Coprian. I have been a classroom teacher for 21 years in Peterborough and I am currently president of the Peterborough County Women Teachers' Association. On my far left is Paul Sullivan who teaches at Saint Peter's Secondary School and is presi-

dent of Ontario English Catholic Teachers' Association, Peterborough, Victoria, Northumberland and Newcastle. On my immediate left is Charlie Ward, legislative representative for Superannuated Teachers of Ontario, Peterborough. On my right is Vito Barbarto, a teacher at Thomas A Stewart Secondary School and President of Ontario Secondary School Teachers' Federation, Peterborough. On my far right is Mark Fallis, an elementary school teacher at Queen Mary school and past president of the Ontario Public School Teachers' Federation, Peterborough.

We would like to thank the committee for this opportunity to bring forward the concerns of our colleagues, the active and retired teachers of the Peterborough area, on the issue of Bill 66.

We are here this evening to do what we do best—teach. We know we have before us a dedicated group of students committed to learning all you can about the teacher pension issue. We also recognize that you come to this topic with varying degrees of interest and knowledge. As good teachers, we hope to build on this knowledge and extend it so that you will be able to make informed decisions and reasonable recommendations to the Peterson government. We are confident that you have read our brief and we would now like to give you some background information which will help put our concerns in perspective.

I would like to call upon Mark and Vito at this time for a short history lesson.

Mr Fallis: Before we refer to the contents of our brief, I want to provide a short historical perspective on why Peterborough is present this evening. Our presence illustrates the concern of teachers at the grass-roots level across the entire province over the impact this legislation is having on our pensions.

Prior to the pension demonstration held in Hamilton on 1 April of this year, Peterborough teachers and public sector employees held a demonstration of their own on 7 March. It was the night of the Premier's cabinet soirée in Peterborough, definitely one of the coldest of the winter. The dissatisfaction the teachers feel with the government's mismanagement of our pensions and the proposed legislation is best illustrated through the news coverage of that demonstration, which we will be showing you in a moment.

Before we view this, however, I would stress that this was not a demonstration orchestrated or planned by our provincial staff. It was not a demonstration of a small hard core of malcon-

tents. Rather, this was a demonstration of classroom teachers and public sector employees concerned about the future of their pensions.

Peterborough has long had the reputation of being a small-c conservative type of city. It has often been used as a test site for new products as it has been recognized as very average or representative of a cross-section of Ontario society. If Peterborough accepts a new product, the country will accept it, and if Peterborough teachers feel pension reform legislation is wrong and riddled with injustices, then so too feel the teachers of Ontario. I would now like to share a video clip from the night the Premier stopped smoking and the teachers of Peterborough started fuming, the night of the Peterborough pension protest.

The Chair: Obviously a multimedia presentation.

[Video presentation]

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Mr Barbarto: We thought we gave the Premier equal time at the end. The brief video clip you have just seen certainly indicates how strongly teachers and public service employees feel about our pensions. One thousand supporters did not attend on the coldest night of this year because we are silly, as the Premier indicated, or as the poster behind us demonstrates, nor because of an unfair contribution hike or lack of significant benefit improvements.

We, as active teachers, retired teachers and public service employees, feel these issues are important, but what is at the centre of this storm is the concept of fairness and a true equal partnership between plan members and the government. The people in the demonstration attended to show their commitment in having a say about how much we pay, about what we get for our money and about who will make these decisions about our future.

As you saw and heard in the video clip, the Premier invited us inside to tell us the straight goods. What straight goods? The fact that this government plans to expropriate almost \$2 billion to pay off the government's fiduciary responsibility for the superannuation adjustment fund's past service liability, or the fact that control of our plan shifts from the Legislature to the cabinet with the passing of Bill 66, or that it is illogical to offer teachers total control but not offer them a dispute-settling mechanism?

By the way, where would this government get the \$15 billion or so that is needed to give back to the teachers? The teachers of Peterborough thought we had come of age after 72 years of governments unilaterally imposing pension deci-

sions on us. We felt the Treasurer had extended his hand, but imagine our disappointment when he broke off talks because teachers refused to accept a partnership, a partnership that did not include clear and fair ways of resolving disputes that might arise between partners.

Millions of employees, including those in Peterborough, have the right to decide their future through pension negotiations. After 72 years, we still have no say in the management of our plan. Paternalism continues. Is it any wonder teachers in Peterborough are fuming?

Paul and Charles will now highlight our concerns about benefit improvements regarding active and retired teachers.

Mr Sullivan: We would like to draw the attention of this committee to an apparent conflict between certain provisions of this Bill and the spirit and intent of the Pay Equity Act. We are required by the board or by the act to negotiate agreements with our school boards to eliminate systemic gender discrimination in the workplace. While this pay equity legislation is certainly flawed, since it provides us with no sanctions to enforce the boards to negotiate meaningfully, its spirit and intent are clear.

We must remedy the unjust treatment of the most disadvantaged of our membership, regardless of whether this injustice was intended. It is ironic that certain terms of this bill discriminate against our female colleagues by ignoring social reality. The vast majority of the teachers in the lowest pay categories are female, since family responsibilities militated against their acquiring more education and therefore moving up on the grid. The majority of female teachers do not accumulate 35 years of service because of broken service records to raise children. This bill hits them with a double whammy. Their pensions will be less than 70 per cent and their best five years will be much less than is the case with the their male colleagues. Then they are hit with a penalty of five per cent per year under the 90 factor or under age 65.

Perhaps an illustration will bring home this injustice. If a teacher retires at age 57 with 25 years and a best five of \$26,000, her pension would be \$18,200. Then she would be hit with a penalty of 40 per cent since she is eight years short of 65 and of the 90 factor, leaving her with a pension of less than \$11,000 annually, a fine reward for 25 years.

We plead with you to lower the age requirement to 60, a change which would raise her pension to \$15,500, still below the poverty line. We often hear rhetoric bemoaning the gap in

compensation between men and women in the workplace. This bill would continue the discrepancy even in retirement. We ask you please to bring it in line with the spirit and intent of the Pay Equity Act.

Mr Ward: You would never guess it, but I am an old guy, and I am going to speak for the old folks here again tonight. My particular concern is the improvement of the pensions of teachers who retired before 1982. These pensioners' benefits are calculated on their best seven and some even on their best 10 income years. I would like you to note that these teachers are the only public service pensioners in Ontario whose pensions are not calculated on the best five. I would like to speak to three aspects of this problem.

First, the past dispensing of the moneys from the solvent teachers' superannuation fund has been used to finance the cost of the window, a very expensive program, as well as the best five since 1982. Therefore, we feel it is only logical that this same fund should be extended to benefit the pre-1982 retirees.

Second, with regard to the proposed merger of the solvent TSF into this superannuation adjustment fund, although the government accepts responsibility for the deficit in the indexing fund, it refuses to release a rather small portion—I think we roughly calculate it at one one-hundredth—of the fund to improve the pre-1982 benefits before the merger takes place. All we are requesting is equity for all retired teachers.

Third, the matter of equity is based on the fact that those teachers, on their best seven and their best 10, created their share of the base money which lead to the present surplus, yet are being denied fair treatment from the fund. As Ann Finlayson said in her book, whose money is it, anyway?

Ms Coprian: The active and retired teachers of the Peterborough area resent that Bill 66 not only fails to implement the partnership promised by the Treasurer (Mr R. F. Nixon) but places real power in the cabinet, bypassing even the Legislature. This approach should be questioned by you, our elected representatives, as well. There must be a decision-making process which requires real negotiations between OTF and the government, as equals, with a dispute mechanism which does not leave final control with one of the partners.

As educators and contributors to the plan, we are being denied the right to participate in the real decision-making, yet it is and has been our dollars which drive the fund. Just as unfairly, you, our elected representatives, are being

bypassed in the democratic process as the cabinet subscribes to some sort of divine right process.

In conclusion, we urge the committee to recommend that no change be made to the present governance structure until the parties resume negotiations and, in the words of Mr Nixon, contemplate real reform in the arrangements in which teachers and the government should be full and equal partners in the amount they contribute to the plan, in the way they share risks and rewards and in the roles they play in the management of the pension funds in the future.

Mr Keyes, I have here over 1,000 signatures in support of our submission and I was hoping you would give these to the Minister of Education (Mr Conway) for us.

Mr Keyes: My pleasure.

Ms Coprian: Thank you.

The Chair: I am very sorry that this is being brought to an end. You did say you were not going to have time for questions and that is the way it has turned out.

Ms Coprian: Well, I am afraid we had to fast-forward our presentation from 30 minutes to 15.

The Chair: Thank you very much. There are two members of my committee who want to—

Mr Elliot: Could I take 15 seconds to thank the group for coming for one of our colleagues who cannot be here tonight? On behalf of Peter Adams, our colleague from Peterborough who is speaking to the Friends of Schizophrenics, Peterborough chapter tonight, he indicated to me he has read the brief, found it enjoyable and regrets not being here.

Ms Coprian: Informative too, I hope.

Mr Elliot: The other thing I would like to mention, in view of the way the chairperson started off from the Peterborough contingent, is that 29 years ago this fall, Charlie taught me all the teaching that I knew. I have been listening diligently again, Charles. It has been a good 29 years because of the start you gave me.

Ms Coprian: Thank you very much.

The Chair: Thank you all very much. Mr Keyes, maybe you would like to ask your question when you accept the signatures.

Mr Keyes: I want it on the record, so I will ask the next group the same question.

The Chair: Okay, if I may have the group from Simcoe, please, would you please introduce yourselves for the purposes of the Hansard.

Mr Dunphy: I would like to introduce the group representing the teachers of Simcoe county

to you at this time. On my far left is David Aylsworth, OTF staff officer. On my immediate left is Bernadette Griffin, president of the Ontario English Catholic Teachers' Association, Simcoe unit. On my far right is Maureen Wilson, president of the Simcoe County Women Teachers' Association and on my immediate right is Gary Laurins, president of the Ontario Secondary School Teachers' Federation, district 27. My name is Michael Dunphy. I represent the Ontario Public School Teachers' Federation, Simcoe district.

To begin, I would first like to extend our sincere appreciation for the opportunity to present the current concerns of the teachers of Simcoe county to the standing committee on social development. There will be two speakers to our presentation, myself and Gary Laurins. I would like to turn things over to Gary to begin our presentation.

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Mr Laurins: I, too, would like to thank this committee for this opportunity to have this hearing. My colleagues and I represent 4,275 teachers in Simcoe county. These members include statutory members, superannuated teachers and occasional teachers. Our brief focuses on the four issues: equal partnership, government control, pension ownership and purchase of credit. I would like to highlight equal partnership and pension ownership, and my colleague from OPSTF will deal with government control and purchase of credit.

Under the title "equal partnership," very simply, justice requires that the new Teachers' Pension Act be based on equal partnership between the plan members, the teachers of Ontario, and the government, but it must be just that—equal.

It seems to us that the provincial Treasurer, after having read Dr David Slater's report, agreed that a full and equal partnership was in order. Section 10 of the proposed act only allows the Ontario Teachers' Federation to have a consultant role in changes to the plan. We feel that it is a must that a dispute resolution mechanism be put in place so that real negotiability and an equal partnership can exist. In Bill 66, an unreasonable amount of authority has been handed to the cabinet. We, the teachers of Simcoe county, respectfully ask, is this an equal partnership?

Pension ownership: It is absolutely clear in our minds that the teachers of Ontario contribute 15.8 per cent of their salary to the pension fund. The Family Law Act, 1986 and the Pension

Benefits Act, 1987 support our interpretation that employee and employer contributions to a pension fund are a form of deferred salary. Economists agree too that because these moneys are not disposal income, they do constitute deferred salary.

Bill 66 directly contravenes the ruling this government made in the Conrad Black-Dominion Stores case that employers do not have the right to expropriate employees' pension assets. These moneys are part of our compensation package to ensure our future. It is our money, it is our future, and we demand an equal say in all aspects of our pension plan.

Mr Dunphy: On the issue of government control, the teachers of Simcoe have a great deal of difficulty understanding how any responsible government can allow the passing of a bill that allows the amount of power granted to the cabinet under section 9 of the proposed Bill 66. I am aware that this issue has been addressed in many presentations to this committee and would submit that it is a reflection of its importance.

Under this section, the cabinet has the power to determine how the plan will be evaluated, the power to determine plan membership, the power to rewrite benefits of the plan, the power to make changes to the plan, including total replacement, and the power to control plan administration. The cabinet can exercise these powers without any input from plan member representatives and without any legislative endorsement.

Section 12 of the proposed bill gives the cabinet the power to determine the future uses of surplus moneys that should, in fact, accrue to the fund. When we look at the history of this country and the fight for the democratic process and responsible government, it fills volumes in our libraries. It recounts the fight for a government which guards against any unilateral control by any one political ideology. As a result, the teachers of Simcoe county fail to understand how a bill that gives so much power to one political ideology, the Liberal cabinet, or perhaps the Peterson family compact, can be considered either democratic or responsible. I am sure there must be some of our ancestors who are literally spinning in their graves. It is our belief that there should be no change in the present structure of governance and that meaningful negotiations between the partners should occur in order that a full and equal partnership can be reached.

On the issue of purchase of credit, Simcoe county teachers support and endorse the Ontario Teachers' Federation position. Our concerns centre on part XI of the proposed bill, with

clauses 93(3)(a) and (b), having particular consequences. With advances being made in the form of pay equity, it is hard to comprehend legislation which would again disadvantage women. I would like to highlight three examples of these disadvantages as identified by the teachers of Simcoe county.

One, in the proposed legislation, the time lines for repayment of accredited service are very stringent for teachers returning from parental leave.

Two, Simcoe county has a large number of single parents, predominantly women, returning to the profession, and payment by instalment, which is often proven to be the only way these teachers can purchase credit, is being eliminated.

Three, the current reduction factors continued in the proposed bill are punitive. As women tend to be younger than their mates, have often had broken service due to parental leave and thus often are placed in a position of having to take early retirement, it impacts to the greatest extent on women. We believe that these inherent injustices must be addressed and the changes must occur to correct them.

Once again, we would like to thank the committee for its attention and urge that it present recommendations that would ensure a full and equal partnership between the government and the teachers of Ontario.

Mr Keyes: Thank you for the brief presentation. While you are not making reference to it here, I assume you have an opinion on it and I want to get at this. Are you aware as to how the funds in the teachers' superannuation adjustment fund are invested, any member of the group? David is going to answer that.

Mr Aylsworth: Yes.

Mr Keyes: Well, it is fine to get the response, but I think the irresponsible, as I could call it, innuendo that was left by the second-last presenters is most unfortunate, as is that in the video we saw in the last presentation by the head of an affiliate. To say that the government has squandered the money in building roads and highways is just so inaccurate. Likewise, for the one before that suggested they did not even know whether the money was invested in anything, I think it is totally irresponsible.

For the record, and that is why I want to make the quick comment, the money in TSAF is all invested. It is invested in term deposits with varying lengths of term, as any term deposit is, and bears interest at about an 11.5 per cent interest rate, rather than the idea that maybe it is

left in a sock somewhere, which was really the impression that was being left.

The other utilization of funds, by law, is that they are invested in government debentures, and when the government has borrowed those moneys, as the law requires, of course they have been used for the purpose of the government. Maybe it is paying the social service benefits of the government, perhaps it is providing housing and perhaps it is building roads and bridges, but all at an investment bearing an 11.2 per cent interest rate. I think it most unfair when affiliates put forth a different message.

Mr Aylsworth: The assets of the adjustment fund are on deposit with the province of Ontario.

Mr Keyes: Right.

Mr Aylsworth: I believe that you are approximately right in the rate, and I will not debate the last two digits of the rate, but I will point out that had the fund been diversified, had it been placed in assets other than government debt, your own studies, those conducted for Mr Rowan, estimated that it could have returned an additional 200 basis points, or two per cent more. If you altered the real rate of return on the assets of the plan by two per cent over the long run, if you can increase the real rate of return by two per cent for ever, you would cut the costs of the pension plan by 40 per cent.

Mr Keyes: I agree entirely. That is why the government has agreed to accept the recommendation of Rowan that it should be in diversified investments. We all agree on that.

The Chair: Mr Morin-Strom.

Mr Morin-Strom: I was just going to try to respond to the one speech with another speech.

The Chair: Well, we really do not have a lot of time for speeches.

Mr Morin-Strom: Certainly it has been well contained in the Rowan and Coward and Slater reports many times. The mismanagement of the government has been well documented, and that is why we are here.

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The Chair: That is your short speech.

Thank you very much for your presentation.

Representatives from the county of Peel, please. Do we have a brief for distribution from Peel? Do you have a brief that you would like distributed by our clerk? Who will be making the presentation? Do I have the wrong names? Maybe I should ask who is going to be the spokesperson, and then you can introduce yourselves. I have a series of names, but they are

not terribly accurate tonight, for any of the presenters.

Mr Murphy: One of the difficulties is that we have had to do the changing of speakers over the last few days too.

The Chair: Okay, well, if would introduce yourselves, certainly that would help.

Mr Murphy: I would like to introduce Kathy Hespopp, who is president of the Ontario English Catholic Teachers' Association, elementary; David Salem, who is president of the Ontario Public School Teachers' Federation, and Ray Parino, who is the vice-president of Ontario Secondary School Teachers' Federation. My name is Bob Murphy. I am a benefits and retirement counsellor with district 10, Ontario Secondary School Teachers' Federation.

Ms Hespopp: The members who helped to write this brief represent over 9,000 teachers, or seven per cent of Ontario contributors to the superannuation fund. Within a Canadian perspective, we represent more teachers than are currently employed in the province of New Brunswick. As local leaders, we were pleased to learn in the fall of 1988 of the provincial Treasurer's intent to review teacher and public service employee pensions. In fact, we understood that the Treasurer was genuinely interested in a new and equally established OTF-government partnership.

The current government-controlled pension plan was to be replaced with one that recognized a more equitable employer-government/employee-teacher model that incorporated full partnership and joint trusteeship between the two parties. It was our expectation that this new relationship would recognize the principle that we and our teaching colleagues have always understood. That is that teachers who pay for their pensions should also have an equal say as to how the pension plan is administrated.

We looked forward to a new era of co-operation. Our expectation was that we would have input into how the fund was invested and how surpluses were spent. At the end of March 1989, we were upset to hear that not only had negotiations between our OTF representatives and the Treasurer broken down but that teachers were going to be forced to defer more of their salary to their pensions, with no substantial improvements in benefits, no control over their investment fund and no acceptable means of resolving differences, should they arise, between the teachers and the government.

Even more alarming to us is that the proposed Teachers' Pension Act, 1989 could give future

control of a teachers' pension plan to the cabinet by means of orders in council. This course of action would replace the provincial Legislature as the final authority in pension disputes and would negate the government's responsibility as a just employer to act in partnership with its employees, the teachers, to find a mutual resolution to their concerns.

Such a unilateral course of action has lowered morale and has done little to preserve and enhance the quality of the teaching and learning environment or to improve the general welfare of over 120,000 teachers who have given many years of dedicated service to education in this province. It does little to address equity for women or the principle of a fair return for a responsible investment. This rash course of action on behalf of the government has exasperated an already sensitive issue with regard to teachers' pensions and does not serve anyone's interests.

Our provincial OTF representatives have worked long and hard on the pension issue on our behalf. It is not our intention here to repeat at length what they have shared with you. We want to make it clear from the outset that we unanimously support the position and actions taken by the OTF board of governors and the OTF biennial review committee in their efforts to obtain a negotiated settlement with the government of Ontario.

Mr Salem: We join the OTF governors in advocating the following guiding principles for the structure and management of a new pension plan for teachers:

1. That the government of Ontario enter into an equal partnership with the Ontario Teachers' Federation in which all risks, rewards and responsibilities are shared equally;

2. That the government of Ontario enter into joint sponsorship of the teachers' pension plan with the Ontario Teachers' Federation;

3. That the government of Ontario enter into an arrangement with the Ontario Teachers' Federation that provides true negotiability of pension issues and allows for the resolution of disputes between the government and the federation;

4. That the government of Ontario assume sole responsibility for the existing unfunded liability of the adjustment fund;

5. That the government of Ontario, in partnership with the Ontario Teachers' Federation, amend the Teachers' Pension Act, 1989 to include improved retirement provisions, fair

reduction factors and an increase to pre-1982 retirees;

6. That the government of Ontario, in partnership with the Ontario Teachers' Federation, amend the Teachers Pension Act, 1989 to establish the minimum contribution rate necessary to secure plan benefits.

During your deliberations on teacher pensions, we expect you will give careful consideration to all these principles.

Mr Parino: We are not the technical experts on pensions, so we do not intend to discuss the actuarial ins and outs of the fund. Rather we intend to focus your attention on those areas in the proposed act that, as local leaders in Peel, cause us the greatest concern. We have serious reservations with those sections of Bill 66 that deal with maternity and parental leaves. Frankly, we do not believe that the provisions in this proposed legislation reflect the often expressed commitment by the government and the two opposition parties in this province to provide equal opportunity for women.

For example, the current wording of the act seems to imply that a pregnant woman in her first year of teaching is not allowed to purchase credited service. Along the same lines, the wording would also imply that a woman must complete 70 days of credited service following her maternity leave before she can make contributions.

Such provisions would appear to compromise the government's claim that it is upholding the right of women to equity under the act. Requirements that women elect to purchase credited service within one year and pay the total lump sum plus interest within three years, in order to avoid actuarial costs, places an unnecessary financial burden on women and their families at a time when their purchasing power after an unpaid leave and with the addition of new family members is at its lowest.

Similarly, under the proposed act, if a woman has had two children and chose not to resume teaching after having each child, she would be limited to purchasing credited service for only one maternity leave. It was our hope that past inequities would be correct in the new pension act. Prior to locally negotiated provisions within collective agreements covering maternity leave, women were forced to resign their teaching jobs in order to care for their children. As a result of this inequity, their pensions have been reduced and will continue to be reduced under the provisions of Bill 66.

Our experience, acquired from numerous conversations with women who retired recently, through the window, has lead us to conclude that many women chose early retirement because they had no opportunity to take advantage of the 90 factor before age 65.

Mr Salem: The retired teacher as educational employee: At a time when there is a recognized teacher and occasional teacher shortage in Ontario, we applaud the government for its recognition of the need to allow retired teachers to supply-teach more than 20 days in a year without penalty. Indeed, retired teachers may teach and/or work for a school board without making contributions or without reduction in their pension for up to 95 days in a school year to a limit of three years. We do, though, have some concerns about this proposal.

First, why was the limit not set at 99 days to more accurately reflect the length of a school semester? Second, why is there a three-year limit?

We ask that you reconsider the section in Bill 66 that directs that a retired teacher who works more than 95 days in a school year or who teaches even one-half day after three years as an active member of the plan must be cut off from receiving a pension. Given the serious penalties involved in violating the proposed provisions, we have two concerns.

First, some retired teachers may lose their pensions due to inaccurate reporting by school boards. Second, fearful of losing their pensions, many retired teachers will not return to supply-teach at a time when the system needs their talents the most.

What is the actuarial cost? We would appreciate a clearer explanation of what this term means. As it is now, we have no way of assessing how much members will have to pay for purchase of credit following approved absences and breaks in service.

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Mr Murphy: All the proposed legislative revisions to teachers' pensions are far-reaching? They are not comprehensive. Is it fair to members who have given long years of service to education or to their families that they be asked to give more money for pensions in return for only limited pension improvements? How can you rationalize that paying more money for the same old thing is a benefit? We want an answer to these questions and so would our members.

What answers do you have for female teachers of Ontario, the majority of our members, who expect this Bill to address long-standing griev-

ances and inequities in their pensions? Is it fair to these women that they continue to be penalized for having taken a break in their teaching careers to raise their children?

Our recommendations are that the Teachers' Pension Act, 1989, Bill 66, be negotiated, not mandated; that should a negotiated settlement prove to be impossible to obtain, the bill be amended to contain a fair process for resolving differences that is binding on both parties; that the standing committee recommend to the Legislature that in all future matters that involve the government in its role as employer, and the Ontario Teachers' Federation representing the teachers, the principle and practice of equal partners should be clearly established.

Last, just as an aside, is it fair for me to read from my local member of Parliament the statement that says, "Retired teachers will now be able to work 95 days without having their pension reduced," and yet I know when I read the act that if a teacher teaches the 96th day or teaches one day in the fourth year his pension is affected? Is this fair?

The Chair: Thank you all for summarizing your brief. Are there any questions from the members of the committee? I then would ask the members from Renfrew to come forward.

Mr Murphy: One last thing, Madam Chair: I would like to present to you some written material.

The Chair: This is unlike your brief. It is in addition to your brief.

Mr Murphy: No, it is a petition.

The Chair: This is a petition that Mr Keyes will take forward to Mr Conway.

Mr Jackson: Can we clarify if the writers want that petition tabled in the Legislature as well or just to be handed to the minister.

Mr Murphy: I would appreciate it be tabled in the Legislature.

Mr Jackson: I just wanted that for the record. I am sure Mr Keyes would be pleased and proud to do that.

Mr Keyes: I think we must clarify for the record that it is totally inappropriately addressed under the terms and rules adopted by all three parties of the Legislature for presentation of a petition. I could not do so in the House in its present form.

The Chair: Are the previous sets of petitions the same?

Mr Keyes: They were not asked. It was just to hand to the minister, so as a result I did not check.

Mr Jackson: Were they worded appropriately, was the chairman's question.

The Chair: I am asking about the other set whether they are worded appropriately for legislative presentation.

Mr Keyes: No, they are not.

The Chair: We have both of those points clarified. They will be delivered to the minister by his parliamentary assistant. May we please have the group from Renfrew. We have your brief already. This is the brief you are looking for in your file, the white cover. Would you please introduce yourselves.

Mr Dodge: I am Ken Dodge. I am the president of the Ontario Secondary School Teachers' Federation in Renfrew county. Gale Lancaster is with me, also Renfrew county, president of the Federation of Women Teachers' Associations of Ontario there, and Ron Griffith, president of the Ontario Public School Teachers' Federation there. Terry Mangan is sitting in with us from the Ontario English Catholic Teachers' Federation.

I also want to thank you for the opportunity to address the committee. I suppose we should all welcome one another to the late, late show, but I thank you all the more because I know the day has been longer for you in listening to all the briefs.

The presentation that you have is the result of a combined effort of all the affiliates. We are a small county, if not geographically at least in terms of our schools. All the affiliates are represented. We also had contributions from the superannuated teachers from our district in making up our report.

The Chair: You did bring forward the people you said you were going to bring forward, which has been unusual tonight, so that has been helpful for us. Please continue.

Mr Dodge: I suppose one of the motivating factors in being here tonight was that at an earlier meeting in Renfrew County—I should have had it on tape—it was suggested to us that one day indeed we would have to grow up and perhaps take over control of our own pension fund. I guess we are here to tell you that we were able to find our way from Renfrew county to Toronto tonight. It was not all that difficult and the message from us is very clearly that in spite of the fact one might like to think that we enjoy a paternalistic approach to our benefits in life, we too would like a share in our future and that we fully support the OTF position in terms of joint

ownership and joint management of the pension fund of the teachers of Ontario.

To repeat again, we really feel that in this day and age in Ontario a paternalistic approach to the management of a pension fund is simply outdated. We are in search of equal partnership. We know it involves risks. I will not say we are not afraid of the risks. I will be more honest than that and say I am almost afraid of risks, but I am willing to accept them if this means that in the long run we will get rid of all these stories as to who is doing what with the money that have circulated in this province with regard to our pension funds for as long as we can all remember.

Let's really bring it out in the open. Let's all know what is being done to our money. We would like to have a share in knowing where it is and how effectively it is working for us.

If we have to pay more money, we want to pay the minimum amount we have to for the maximum benefits. If we have surpluses in our fund, we want those surpluses to go to provide better benefits for our members. We are frightened by the prospect in the bill of when again would we ever be able to negotiate an improved benefit in the fund as the legislation stands.

I also have a feeling—I guess it is very personal but I would hope it is shared by others—that surely the only message this government would want to send to the people of Ontario today is that any pension fund should be under the joint ownership of management and workers and that it would be a message that for the betterment of all people in Ontario, the co-ownership of pension funds is really the only way to go.

I want to repeat, and living in a smaller area we become very aware of this, that we have had our pension called a Cadillac pension plan, the best there is. So many people have pointed out, and I guess the question is, but who really gets around to taking it?

We have talked tonight so often about the role of the women who are in our profession. There is the role of the window: I know that in our small schools the window came and people went, and frankly as president of one of the affiliates, I am quite concerned about some of the people who went on the pension that was available to them through the window. They went because they had reached an age in which they saw that waiting to 65 was a risk that they felt they did not want to take in terms of their own wellbeing. They took the risk of going not with a rosy pension fund, but rather with one that was really, I would think, marginal, a 50 per cent pension.

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They were afraid to stay on because the penalties in the current plan are so prohibitive that they were frightened to take the risk of seeing whether indeed they would go on to 65. People who went through the window in my area did not go with 70 per cent pensions. They were lucky if they went with 60 per cent pensions and many of them went with 40 per cent pensions.

This is equally true of the women in our profession who have taken extended leaves for the raising of their family and find themselves eligible for less than rosy pensions. It is not that I think a pension plan can address and have a ready answer for all these questions or all these concerns. I merely want to stress again that not every teacher in Ontario is going out with the most wonderful pension in the world.

We are disappointed that certain inequities have not been addressed. With 32 years of teaching behind me, I can honestly say that I think that if someone teaches 35 years, he is entitled to a full pension regardless of his age, perhaps with a medal to go with it.

I have included a letter at the end of ours. Now I think it becomes really very personal and I have asked permission of the teacher to use his name. I bring it forward to you to show the difficulty you can have when you have a single ownership of a plan by a very large body. That is the case of Arnold McIntyre who teaches with me who right now finds himself about, or has in the past and is about to pay through his contributions for benefits within the plan for which he will never be eligible.

He was one of those people who worked for nine years for Ontario Hydro, left and at that time was unable to have any vested amount of money in the plan because he had not been there for ten years. He had no choice and he was required to withdraw his benefits from the plan.

In the meantime, deals have been worked out whereby if you left your pension income in a plan, you were able to transfer it over. There seems to be no way within the changes suggested that he would ever benefit from this. I am also frightened that even if it were allowed that he could buy the time back, so many years have passed in his fight for justice that the cost under the new plan may be totally prohibitive. I would hope that in shared ownership of a plan, problems such as this could be addressed in a more humane fashion.

I am deeply concerned about the pre-1980 retirees. I know about it through my own personal friends, such as a gentleman who was

one of my best friends, a Hungarian immigrant to Ontario who came into teaching very late and retired with 18 years, 65 years, 36 per cent pension, best of seven years. I find it very difficult to have conversations with him in terms of why his is continually based on best of seven years and mine will be based on the best of five. I would really urge the government to consider rectifying what I consider to be an injustice to a group of people, many of whom are not surviving on particularly high pensions.

I am concerned that teachers who are 60 years of age with 10 years or more of experience should not be facing reductions in their pensions when they decide to go. I think 60 is an appropriate age factor to be considered.

As some have mentioned, I am alarmed that the cabinet, it would appear, will have the sole control over my pension. At least in this way I can get to watch all of you on TV in the afternoon when I am not running around Renfrew county seeing you debate. I would hate to think that having lost the opportunity to share in the plan, I would also lose that pleasure.

I think again, very simply, that we are looking at a more democratic process, a more humane process, one in which in our new grown-up position we do share the risks but also share the ownership and the management of our pension plan.

Mr Jackson: I would like to be the first to thank Mr Dodge, who along with at least two colleagues has travelled a great distance to be here with us tonight. As this hour gets very late, I want to thank you for the very personal comments that you brought to us, aside from your brief which is very good, but we have been missing a bit of the element you brought tonight and I am glad I have able to stay late to hear them on a personal note. When you made reference to the maturity and the sharing and your ability to arrive here unscathed and to be unlost, I could not help but be reminded that your own member probably had no difficulty getting lost until he got here to Queen's Park. Certainly his legislation would indicate that he has forgotten a few things. I did not have a question. I just wanted to specifically thank you for the points you raised.

Mr Reycraft: Such charity.

Mr Jackson: Well, I thought these personal examples were appropriate and I think that had all members looked at those in more detail, we might be seeing more amendments to this legislation. I am quite convinced of that.

The Chair: Are there any questions?

Mr Keyes: I asked once before but maybe I could ask it again to this group, and that is the change in position that has been taken, where the Superannuated Teachers of Ontario has fought the good fight for the best five instead of the best seven, but here we now come to the \$1,000 and the \$500 for survivors. Perhaps we could have a comment. That still sends a mixed message, I think, to government when STO fights hard for one and then there is a sudden change.

Mr Dodge: I am not really sure there is a change and I would be supporting the OTF position of the \$1,000 and \$500. It was simply that I have over the years gone along the pattern you have of always thinking in terms of seven and five. I would be fully supportive of the OTF position. I would not be in conflict with it.

Mr Morin-Strom: I think Mr Keyes must have missed STO's presentation earlier today when they went into detail as to why they have changed that presentation. It is not just the OTF that has changed that view; it is STO itself.

Mr Keyes: They are still putting it in their newsletter this month.

Mr Morin-Strom: One other point, just a point of difference with your presentation on one of the points you make here: Clearly it is now accepted in Ontario that ownership of retirement plan rests with the participants. This may be a general feeling in the general public but it certainly is not a feeling here in the Legislature. I think you have to communicate that to the government because that is not indicated, not only in your plan but in terms of pension legislation covering all the plans across this province. That has not been accepted at all by the government.

Mr Dodge: Actually, I read the Toronto Star, I believe it was on Friday, and the article was with regard to the Ontario Hydro pension plan. I thought perhaps there would be a phone call to all of us to wait and that reconsideration would immediately begin on the whole pension question.

Mr Morin-Strom: I am sure they are fighting that to the Supreme Court.

The Chair: Thank you all very much, both the presenters and the committee members tonight, because it has been a late show. We have finished on time and that certainly is an accomplishment. Perhaps I may just remind the members of the committee that we will be meeting at our regular time tomorrow at 3:30 in the afternoon. This room, however, will be in use between now and then so I am afraid I am going to have to ask you to take your belongings with you.

The committee adjourned at 2130.

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Armstrong, Gerald, Superannuation Commissioner

From the Ontario Public School Teachers' Association:

Martin, Bill, President

Mattice, Burleigh, Executive Assistant

Lennox, David J., General Secretary

Kendall, David C., Past President

From Local Inter-Affiliate Groups, Ontario Teachers' Federation:**From Brant-Haldimand:**

Ishibashi, Bob, President, Ontario Secondary School Teachers' Federation, District 523, Haldimand

Eagles, Catherine, Provincial Councillor, District 5

Harrison, Orland, President, Superannuated Teachers of Ontario, District 40, Brant

From Bruce:

Lowe, Mary Jane, Ontario English Catholic Teachers' Association, Bruce/Grey

Swanton, Wayne, President, Ontario Public School Teachers' Federation, Bruce

Mattice, Burleigh, Executive Assistant, Ontario Public School Teachers' Association

From London-Middlesex:

Pooley, Michael, Ontario Secondary School Teachers' Federation, London

Feasey, Robert, Ontario Secondary School Teachers' Federation, Middlesex

Barrett, Brian, Ontario English Catholic Teachers' Association

Aylsworth, David, Ontario Teachers' Federation

From South Niagara-Lincoln:

Connors, Stan, Ontario Secondary School Teachers' Federation, Niagara Region

Watt, John, Ontario English Catholic Teachers' Association

Osborne, Shereen, Federation of Women Teachers' Associations of Ontario

McMahon, Jim, Ontario Public School Teachers' Federation, District 6

From the Ontario English Catholic Teachers' Association:

Lennon, Eileen, President

Cote, Michael, First Vice-President

Jones, Suzann, Table Officer

Mangan, Terry, Deputy General Secretary

From Peterborough:

Coprian, Velma, President, Peterborough County Women Teachers' Association

Sullivan, Paul, President, Ontario English Catholic Teachers' Association, Peterborough, Victoria, Northumberland and Newcastle

Barbato, Vito, President, Ontario Secondary School Teachers' Federation, Peterborough

Ward, Charles, Legislative Representative, Superannuated Teachers of Ontario, Peterborough

From Simcoe:

Dunphy, Michael, President, Ontario Public School Teachers' Federation, Simcoe

Aylsworth, David, Ontario Teachers' Federation

Griffin, Bernadette, President, Ontario English Catholic Teachers' Association, Simcoe

Wilson, Maureen, President, Simcoe County Women Teachers' Association

Laurins, Gary, President, Ontario Secondary School Teachers' Federation, Simcoe

From Peel:

Murphy, Bob, Benefits and Retirement Counsellor, District 10, Ontario Secondary School Teachers' Federation

Hespop, Kathy, President, Ontario English Catholic Teachers' Association, Elementary

Salem, David, President, Ontario Public School Teachers' Federation

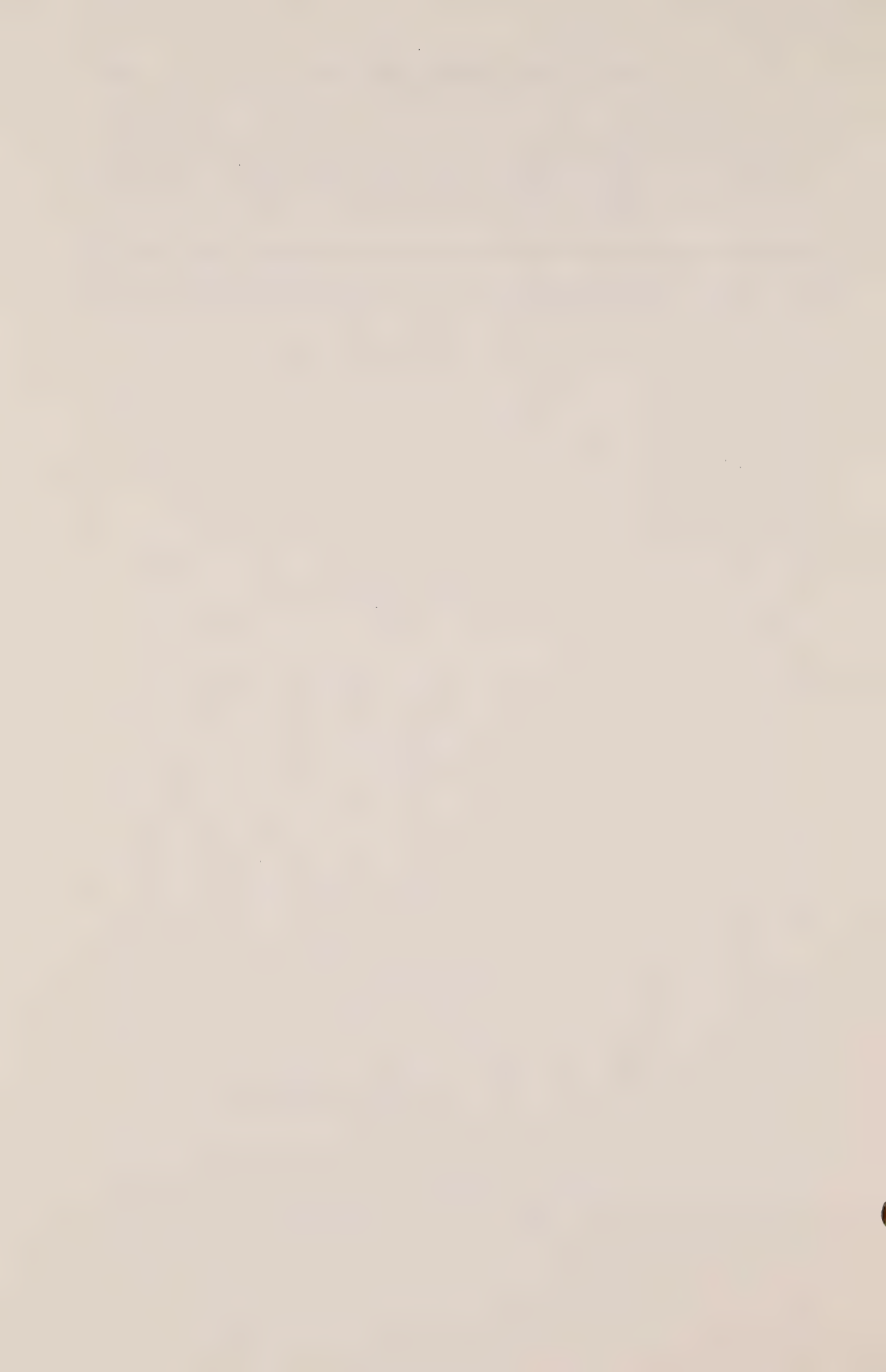
Parino, Ray, Vice-President, Ontario Secondary School Teachers' Federation

From Renfrew:

Dodge, Ken, President, Ontario Secondary School Teachers' Federation, Renfrew County
Lancaster, Dale, Federation of Women Teachers' Associations of Ontario, Renfrew County
Griffith, Ronald, President, Ontario Public School Teachers' Federation
Mullin, Terrence, President, Ontario English Catholic Teachers' Association

Témoïn:**Des groupes locaux affiliés à la Fédération des enseignantes et des enseignants de l'Ontario:****Du sud de Niagara/Lincoln:**

Laverdière, Danielle, Association des enseignantes et des enseignants franco-ontariens





No. S-13

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development

Teachers' Pension Act, 1989

Loi de 1989 sur le régime de retraite des enseignants

Second Session, 34th Parliament

Tuesday 12 December 1989



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 12 December 1989

The committee met at 1533 in room 151.

TEACHERS' PENSION ACT, 1989 (continued)

LOI DE 1989 SUR LE RÉGIME DE RETRAITE DES ENSEIGNANTS (suite)

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

Étude du projet de loi 66, Loi portant révision de la Loi de 1983 sur le régime de retraite des enseignants et apportant des modifications connexes à la Loi sur la profession enseignante.

The Chair: I call to order the meeting of the standing committee on social development. We are in the process of a hearing on Bill 66, An Act to revise the Teacher's Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

I believe that the first presenters this afternoon are from Hamilton-Wentworth. Please come forward.

Mr Reycraft: Do we have their brief?

The Chair: Yes. We were presented with that brief earlier. This is the look of the brief that you are looking for in your pile.

If you would introduce yourselves and your spokesperson, it would be very helpful. Please begin. As you know, these hearings are 15 minutes. You may choose to use the 15 minutes or grant some time for questioning. Please begin.

LOCAL INTER-AFFILIATE GROUPS, ONTARIO TEACHERS' FEDERATION

GROUPES LOCAUX AFFILIÉS À LA FÉDÉRATION DES ENSEIGNANTES ET DES ENSEIGNANTS DE L'ONTARIO

Mr Faulknor: I will begin as soon as I can get my stopwatch going so I make sure I have my 15 minutes correct.

My name is Chester Faulknor. I am a secondary school teacher for Hamilton-Wentworth. I would like to thank you on behalf of our committee for letting us speak here today. I would like to introduce you to the people who

were involved in the writing of the brief from the Hamilton-Wentworth area.

Gene Bakody from the Ontario Public School Teachers' Federation, Wentworth district, is not here with us; neither is Bev Corsini from the Hamilton Women Teachers' Association, nor Eugene McMahon.

Not seated at the front, but certainly very essential in the writing of our brief, are Horst Schweinbenz from the Ontario English Catholic Teachers' Association, Hamilton-Wentworth elementary unit, and Gail Rusnell from the Ontario Secondary School Teachers' Federation, District 8. Seated here today are Diane Page, on my right, from the Wentworth Women Teachers' Association; Rein Ende, beside me, from OPSTF, Hamilton district; Joan Rapsavage from the Superannuated Teachers of Ontario, District 13; and Raymond Therrien from l'Association des enseignantes et des enseignants franco-ontariens, unité secondaire, Hamilton.

We have designed our presentation to use our 15 minutes basically by having each person at the table speak for a minute and a half to two minutes. That will give you sort of an indication, hopefully leaving around five minutes for questions at the end, if our stopwatch works right.

The Chair: That would be helpful.

Mr Faulknor: Raymond Therrien will be the last presenter before I do a summary. I thought I would let you know that because Raymond is doing it in French, as you may know, and it might be easier for you to recognize that.

The Chair: Will you be reading from the brief?

Mr Faulknor: We have decided not to read from the brief since the brief is, in essence, brief and we felt that it would be more useful for us to take a slightly different tack.

Although we supported the Ontario Teachers' Federation brief and were pleased to give it our wholehearted support, it did not seem functional for us to just simply regurgitate the same facts and deal with the same statistics. We would take a slightly different approach.

What we have tried to do is focus on issues that the local teachers in Hamilton-Wentworth are involved in, issues that come clear to our minds, where we have people whom we know, people

whom we are involved with personally who have problems. That is the method we decided to take.

Our first issue that we raised in the brief was the one of governance. It is probably the most difficult one from a local perspective, because it is probably the most technical in terms of the legalities, etc.

Coming from Hamilton-Wentworth, we have strong concerns about a pension plan that does not appear at this moment to give us a real, equal partnership in terms of decision-making. You have to understand that most of our teachers live around and among people from places like Stelco and Westinghouse where they are used to people who assume that, if they have a pension, the pension belongs to both of them and when decisions are made as to what to do with the money and the income, etc, those decisions will be made in some kind of equal partnership. We are hoping that can somehow be rectified and changed to make sure that comes.

The thing that would guarantee it, it would seem to us, would be some mechanism to settle a dispute. We will present to you small local problems that we have. If those problems cannot be solved and we cannot agree, we would like to see some mechanism that is neutral to say, "Well, here are the two sides and here is the decision." We are willing to live with that but we would like to think that is the minimum we could have.

Ms Page: Because we are in a system where everything we do is based upon children it seems paradoxical, from my point of view, that the leaves we are addressing in this bill are almost penalizing people for having children.

Take a classic case, someone about my age who is the wife of a member on this committee and who started teaching in 1965. She had two children. She started without a degree and she left teaching in 1972. About that time this couple would have been buying a house.

This lady came back to teaching in 1979 and needs to pay back her pension. At that particular time she would have started to pay back in instalment plans but, because of constraints, she did not do that. Now she would like to do that and Bill 66 is preventing it because she is faced with paying a lump sum back at a time where she has three years to do that. If she does not abide by that particular ruling, she will have actuarial costs which will be completely out of sight.

At the same time, remembering that this lady does not have a degree, she wishes to take that leave of absence for a year and pursue university or degree work. She is also penalized for that

particular want because at this time Bill 66 does not allow any leaves for travel or study.

Taking it to a general level, beyond just the female perspective, where does this leave our younger teachers who are coming in who may wish to pursue a maternity leave? Where does this leave teachers who wish to travel or have study leaves? I find it increasingly difficult to understand this pension bill at this time of equal opportunity, pay equity, things that, on my local level as an upcoming principal, I am very, very concerned with.

This bill seems to discriminate in many areas against those particular trends, especially coming into the decade of the 1990s. These hurdles must be addressed for people to be enticed into our profession. There is a shortage of teachers at this point and it is not going to get any better. Certainly at this point the pension bill does not entice anyone into this particular type of work.

1540

Mr Ende: Another issue that we need to deal with is the teacher who has changed careers in midlife. One of the members of our team worked at Stelco for a number of years—17 years—and then decided to get into teaching because of the ability to work with human beings, to work with young children and to make a difference in their lives.

With his 17 years' experience at Stelco he is entitled to a pension of \$4 per month for each year that he has worked. So after 17 years of work he is entitled to a pension of \$68 a month. That is not the issue.

He has also taught for 20 years and he has missed out on that age 55 window by six months. He should be entitled to some kind of teacher's pension based on 20 years' experience.

Generally speaking, most of you should be familiar with the fact that a teacher's pension is calculated by taking the years of experience, years of service, multiplying by two per cent and then multiplying by some figure based on the best five years' experience.

In this case, you might expect that his pension based on 20 years of experience would be something generated from a factor of 40. As it happens, if he retires before he has reached his 90 factor, there is a five per cent penalty for each year that he is short of that. At 20 years' experience, at the age that he is, that works out to about a 70 per cent penalty off the 40 per cent pension that he would be entitled to. It would work out to a very small amount, and this is one of our concerns.

We would recommend for someone who reaches the age of 60 with at least 10 years of service that the reduction factor not apply and, in another case, that before the age of 60 the reduction factor be less than five per cent, possibly 2.5 per cent. We make this appeal just in the name of being humanitarian, sensible and sympathetic to the plight of such teachers.

Another area is teachers who are disabled and on some form of long-term disability benefit. Under the proposed legislation, they would be required to contribute an additional two per cent after January 1991. We are concerned that this would be a burden to the disabled teacher. You might guess that somehow or other there would be some approach to generate that amount from the insurance carrier, and of course that would obviously increase the cost of carrying this kind of coverage.

Our proposal would be to grandfather the situation for those people who are now disabled. We propose that the payments be made by the carriers and we would like to see an elimination of that two per cent penalty that is proposed.

I turn it over to Joan.

The Chair: I do not know how much longer your presentation is. You have about four minutes left and I have two people who would like to ask questions. They do not have to ask questions if you want to use your full time to present.

Ms Rapsavage: You will note, on page 5 at the bottom, that the last increase by the government was in 1987. Many, but not all, received an increase in their pensions. Mostly A pensioners received this increase. Many pre-1976 retirees are receiving teacher benefits below the poverty line. For example, a female who retired in 1965 and taught 42 years receives approximately \$8,575 per year in teacher pension, a female who taught 26 years and retired in 1969 receives \$9,200 in pension and a female who retired in 1969, age 87, receives approximately \$6,600 in pension.

Consideration must surely be given to pensioners such as these. At present, future benefits would not apply to these people. Inflation will rise, according to our federal Minister of Finance, as well as the cost of living. As a result of this, the value of these pensions will continue to decrease.

In all fairness and justice, pre-1982 retirees deserve consideration in Bill 66. Therefore, we are recommending that these pensioners have their pensions increased by \$1,000 and the survivors' pensions by \$500.

M. Therrien : Discutons maintenant de la restriction des 95 jours. Avec cette restriction imposée sur les enseignants et les enseignantes à la retraite, la possibilité d'un retour en enseignement, pour des raisons quelconques, est sévèrement limitée.

Par contre, cette même restriction ne s'applique pas à l'enseignant ou à l'enseignante, venant d'une autre province ou d'un autre pays, qui est présentement à la retraite. Un enseignant ou une enseignante de l'Ontario, ayant oeuvré pendant de nombreuses années, donc ayant pleinement mérité une juste pension, se trouve défavorisé si lui ou elle veut faire même seulement de la suppléance. Ce projet de loi a donc comme conséquence d'enlever un réservoir important d'enseignants et d'enseignantes qualifiés à nos élèves.

Pour les secteurs francophones de Hamilton et du sud de la province, cette restriction peut avoir des conséquences encore plus graves. A cause de la pénurie d'enseignants et d'enseignantes francophones qualifiés, il est très difficile de combler tous les postes disponibles. On embauche régulièrement des gens de l'extérieur de la province, souvent avec lettre de permission. Pourquoi ne pas permettre à un enseignant ou à une enseignante à la retraite de combler un de ces postes et d'apporter à ces étudiants ou étudiantes son immense expérience ?

Dans la situation actuelle, cet enseignant ou enseignante se verrait placé dans une situation déplorable. En voulant venir en aide à ses étudiants, cette personne se verrait sévèrement pénalisée, puisqu'elle ne recevrait plus sa pension de retraite. D'ailleurs, il serait à l'avantage de cette personne de se trouver un emploi dans un autre domaine qu'en éducation. Quelle perte pour nos écoles !

Même si cette personne ne veut faire que de la suppléance, à sa quatrième année de suppléance, même si ce n'est que pour une seule journée, elle se voit pénalisée. Cette même personne serait, par contre, la bienvenue dans nos écoles pour faire du travail volontaire. Donc, pourquoi pénaliser nos élèves de façon aussi radicale quand l'élimination de ces restrictions ne serait d'aucun coût au régime de retraite ?

Mr Allen: I welcome the brief from Hamilton-Wentworth. A lot of work has obviously gone into it and I appreciate also the bilingual presentation.

Nous reconnaissons les divers éléments dans ce projet de loi et la possibilité d'amendements.

Could I just ask you a question? The government has said that really there is no need for a

dispute settlement mechanism because there is a kind of double veto there. What is wrong with the double veto? Why will it not work to protect what you want to protect?

Mr Faulkner: It would seem to me the trouble with the double veto is—and this is a personal understanding, it is nothing checked with anyone— if two people can say no, the odds of ever having anything happen at times—Let's suppose there tends to be a big surplus of some kind and then one side says it wants to do something, we go for more benefits and the other side says no. That is a veto. That is nice.

Now, let's suppose they want to cut it because there is a deficit. They can say, "Well, it gives you a sense of democracy," but what it also gives you is a sense of static. What should happen is someone should come in who is neutral and make the decision as to what is going to happen. Otherwise you will just be stalemating each other at any time. It is like the Russia-United States veto in the United Nations; it makes the UN useless that way.

The Chair: Do you have a one-minute question, Mr Reycraft?

Mr Reycraft: Yes, to Diane. You expressed your concerns about the buyback provisions in the bill, but you did not tell us what you would prefer to see in the legislation.

Is it your suggestion, then, that the buyback provision should be open ended in terms of time, or should there be a five-year period or something else that is just larger than the three years provided by the current bill?

Ms Page: There should be instalments for sure so it is not a lump sum payment, because that is really strapping people at this point and there are hundreds of us in that situation in the Hamilton-Wentworth area. There should be a time factor that is reasonable, whether it is five years or indefinite. But there are people who are panicking, people who, as I said, were graduates in the 1960s who have not paid back their pension and who now are in a panic situation because they feel they have three years.

Mr Reycraft: Do you think that a five-year buyback provision would be reasonable?

Ms Page: Yes.

The Chair: Thank you all very much for presenting your points so clearly.

As the delegations are changing I would draw your attention to the legal opinion that you asked for yesterday, which has been provided for us. Second, the government amendments are also in

front of you as they are to be presented at this time.

If the members from Waterloo-Wellington would introduce themselves it would be very helpful.

1550

Mr Keyes: I understand there was a brief mailed or left here yesterday by a member from Ottawa who called today, frantic to make sure it got read by the members.

The Chair: I am sorry. It has not been brought to my attention but I guess it is here somewhere.

Okay. The members from Waterloo-Wellington, please.

Ms Reid: Thank you very much. I would like to introduce the members that are here with me today. At the far end, on my left, is Ray Mark, who is representing the Superannuated Teachers of Ontario, District 11. Next to me is Brenda McGinnis, who is representing the Ontario English Catholic Teachers' Association, Wellington unit. At the far end is Bob Glazebrook, who represents the Ontario Public School Teachers' Federation, Wellington district. Next to Bob is Ron Harris, who is the staff officer with the Ontario Teachers' Federation—

The Chair: —and who has been here before.

Ms Reid: Yes. Next to me is Gordon Johns, who represents the Ontario Secondary School Teachers' Federation, District 24. And I am Donna Reid, representing the Waterloo County Women Teachers' Association.

We are pleased to have this opportunity to present our brief to the committee. Many hours of work have gone into this brief in terms of writing and discussing the issues with our members. Each school or workplace, in total around 2,300, was given a copy of the brief and asked to discuss the philosophy and recommendations embodied within.

We have brought with us the signature petitions that show teachers, both active and retired, support the positions taken by OTF and this presentation today. Our members are concerned and they realize that the decisions made by the standing committee on social development will affect their future.

On behalf of the 7,000 teachers in the region of Waterloo and Wellington county, we ask that you consider amendments to Bill 66 that reflect the Canadian sense of justice, fairness and equality.

Our brief has been limited, by design, to three areas of concern: full and equal partnership, the purchase of credit for service, and benefits.

Under full and equal partnership, we wish to restate the point that has been made often and by every group that talks or presents to members of the government: an equal partnership cannot exist where one partner has absolute power to change or amend the conditions of the partnership.

A mechanism to reach finality on issues under dispute is necessary. Teachers have dispute mechanisms with their employers in matters of collective bargaining. Other sectors in the workplace have dispute mechanisms in matters of pension. We do not believe it is just or fair for the government to ask teachers to set aside their interests because the government is the acting employer. Effective, fair bargaining can take place only where a series of checks and balances ensure equal access to power over the resolution of disputes.

We believe, as professionals who have responsibility for the children and youth of our province, that the paternalistic pattern of the past must end. We request that serious consideration be given to a partnership with teachers that includes an arm's-length mechanism to resolve disputes.

The second section of our brief on page 3 deals with certain aspects under the purchase of credit for service. My colleague Gordon Johns will speak to this section.

Mr Johns: Our concern is over the fairness of the intended legislation; in particular, the requirement to complete one full year before being eligible to purchase time taken for a leave such as maternity leave. This will create hardships which are unnecessary and could be easily eliminated without any major cost.

1555

In a similar vein of fairness, increasing the employment requirement from 20 days to 70 days following a leave before being able to purchase the leave time creates unwarranted problems. We urge you to maintain the status quo.

The proposed changes for the purpose of credit for other employment, such as military service, business and technical, will place financial strains on teachers that need not occur. For many, they would no longer be able to use lump sums received upon retirement but would be forced to borrow thousands of dollars to make the payment. We urge you not to move from the present arrangement.

Ms Reid: The third issue presented in our brief is on page 5, entitled benefits. Teaching is a service profession and people who choose

teaching as a career do so because they want to contribute to our society.

Our efforts in the education and socialization of children and youth do not go unrewarded while we remain in the field. We believe that a fair distribution of benefits, when we retire, is just and deserved. Gordon?

Mr Johns: At the present time, a teacher may retire upon completion of 35 years of service in education. Since no significant improvement in pension is possible by teaching beyond the 35-year period, forcing one to do so is absolutely unfair. We urge you to continue the current practice.

Teachers who enter the profession late in life because of educational or industrial requirements face major reductions in their pensions. Should they wish to leave teaching at 55 or before reaching their 90 factor the combined reduction of 10 per cent for every year they need to teach to reach the 90 factor, along with in many cases not being allowed to purchase credit for required industrial years, results in an extremely low pension.

For example, a teacher starting at age 30 would, after 25 years of teaching with a best five of \$40,000, receive a \$10,000-a-year pension compared with a \$28,000 pension for someone retiring at the same age, starting 10 years earlier. We strongly request that the penalty be reduced to a realistic two and a half per cent per point below the 90 factor.

When age is used to determine the penalty, we believe that the option should be to retire without a penalty at age 60, as there are many women with broken service due to family commitments as well as men and women who enter teaching later in life who are unfairly penalized by the present rules.

Ms Reid: In conclusion, our presence here today is motivated by the strong belief of those we represent. The 7,000 teachers who support this brief and who daily give service or have given service to all of us through their work urge the committee to support amendments to Bill 66.

We respect and are proud of our profession. We believe that our requests are just, fair and presented with integrity. We are not silly, we are not unreasonable, we are not undeserving. We are teachers asking for a fair deal.

Mr Farnan: In the early years of my marriage I can recall my wife saying to me that in a democracy of two someone must cast a deciding vote and that she would be casting it. I somehow felt uncomfortable with that situation and I can appreciate your need for a dispute settlement

mechanism that will avoid the stalemate in the plan.

Now my party insists that such a mechanism is necessary, but if you do secure such an amendment, would you also require that section 9 of the bill be eliminated? Section 9, among other things, under clause 9(1)(f) suggests that the Lieutenant Governor in Council "may rescind the plan and replace it with another pension plan."

Mr Harris: If there was a partnership agreement with dispute resolution, there would be no need for section 9. It could be removed. What we have to look at is what gives it the force of law. It was indicated in the Ontario Teachers' Federation brief that you could put the amendments as agreed to by the two partners in the Ontario Gazette, with the understanding that within the power of the act you would have a way to block and therefore compel the partners and the people involved to comply with the conditions of the pension plan. You would not need section 9.

Mr Farnan: You are brilliant.

1600

Mr Jackson: I am interested in asking a question about the assurances the government made around the 1 April rally in Hamilton. Around that time the Treasurer (Mr R. F. Nixon), in a letter to all teachers in this province, indicated that he already had discussed three options. We know one to be government-run and another to be member-run, but he talked about a full and equal partnership. Could you tell me what you thought of that phrase, "full and equal partnership," at the time it was first introduced by the Treasurer?

Ms Reid: I think that we can say what we believe is a full and equal partnership. For any partnership to be equal, there has to be some way in which you can resolve the differences. For us that means it is necessary to have those checks and balances I talked about and that each has access to that kind of power so you can resolve those disputes through a mechanism, and we would prefer that mechanism to be at arm's length.

Mr Jackson: I just want to get a sense of your understanding. The government now no longer uses, or subsequent to that letter never has referred to a full and equal partnership; it is now being referred to it as a joint partnership. In fact, Mr Keyes and Mr Reycraft, who are the designated hit men, point men or whatever you want to call them for the government, have

indicated on this bill that they are only using the language of joint partnership.

Do you find that somewhat unusual? Have you any explanation for that? Have you pursued with your local Liberal members why the language has changed from "full and equal partnership," which is no longer being used, to simply "joint partnership"?

Ms Reid: Mr Jackson, if I had known you were going to ask that question I certainly would have pursued it with the people in the field who have been lobbying, but since I did not know, I cannot tell you what our people might say, unless there is someone from Wellington.

Mr Glazebrook: I had the opportunity to speak to Rick Ferraro, who is the MPP for the city of Guelph. I did not get the impression we were talking full and equal partnership in any way. What I sensed was a dictatorship. The government will tell you what is going to be in there. The government is not willing to bend. It is set in its manners and that is the way it is going to be.

Mr Neumann: In seeking a partnership arrangement, is there anything short of compulsory, binding arbitration that would be acceptable? In asking that question, I am conscious of the fact you made a comparison to the bargaining that goes on at the school board level. From having been involved, I know that compulsory binding arbitration does not exist in the teachers collective bargaining act. It is rather a voluntary arbitration process.

Ms Reid: In any negotiation process, there has to be an opportunity for each side to move. What we are saying within our brief is what we believe would be the best route and something all teachers could accept, that we need some way to come to finality on an issue of dispute. The best way, in the interests of both the government and teachers, is to have an arm's length, for certainly within negotiations one has to be able to listen to what the other side may offer.

The Chair: Thank you very much, Ms Reid, and the other members from Waterloo and Wellington. May I, have the delegates from Windsor, please.

Ms Reid: May we leave these petitions?

The Chair: Yes. Mr Keyes seems to be the keeper of petitions in transporting them to the minister, so I presume he is willing to assume that role again today.

You are staying in place, Mr Harris? Mr Henderson, are you the spokesperson for the Windsor group?

Mr Henderson: To my far right is Ron Harris of the Ontario Teachers' Association. To my right is Gerald Armstrong, Ontario Secondary School Teachers' Federation superannuation commissioner. To my left is Bonnie Brown, representing the Federation of Women Teachers' Associations of Ontario. I am Tom Henderson, OSSTF.

Thank you for the opportunity of expressing our views to the committee. I do not want to belabour the point about the need for a dispute resolution mechanism. It has been dealt with again and again at these hearings. So I would like to take the members of the committee back three and a half years to the debate over Bill 103, which you may recall was the early retirement window for teachers. It just recently closed on 31 August.

As you may recall, it was hotly debated. Representatives of Treasury and the Ministry of Education protested long and loudly about that window. They told the standing committee on social development that it was too expensive, that it would endanger the fund, that the sky would fall and that all sorts of things would happen.

There are members here who did not buy those arguments, Mr Reycraft and Mr Allen in particular. They said no to the civil servants, but they said yes to fairness. They persuaded the government to revitalize our schools by giving older teachers the chance to retire early. Many of them did so and as you know the sky did not fall, and the window did not cost nearly as much as some ministry people predicted. In fact, the main teachers' superannuation fund still has a huge and growing surplus. By the way, many of the doom-and-gloomers in those ministries have since left government service.

The point is that the main teachers' superannuation fund is very healthy and we would like you to have the courage to say yes again. Say yes to some fair benefit improvements and a fair dispute resolution mechanism and you will have happy teachers whose faith in government will be restored.

Teachers will say, as they did about the window, that a government can treat teachers fairly, and hopefully in the next election they will remember that you did treat them fairly.

That is all I have to say. I would like now to turn the discussion over to Gerald Armstrong. Gerald is our superannuation commissioner. Teachers in Windsor and Peterborough have had a long association with Gerald with regard to pension matters.

Mr Armstrong: Issues of concern to the teachers' pension plan before this committee fall into three areas: funding, which is what we pay, what teachers pay; benefits, which are what we get for what we pay; and governance, which is who will decide what we pay and who will decide what we get for what we pay.

OTF Windsor has asked me to make a few remarks about the benefit package. First of all, the OTF benefit improvement package is not a Christmas shopping list. It is not a wish list. Teachers are not making unreasonable demands for benefit improvements.

By the way, Mr Keyes, you will find the costing of the benefits package in appendix Q, page A28 of the provincial OSSTF brief, and the costing was done by the Ontario government actuaries.

In the last three days you have heard sound arguments for several retirement options that meet the personal and professional needs of teachers. These include a reduction of the 90-factor penalties, providing an unreduced pension for 35 years of service regardless of age, and providing an unreduced pension for teachers who are 60 years of age and have 10 or more years of credit. One affiliate put forward a provision for an unreduced pension at age 55 with 30 years of credit.

What I would like to do is have a look at the benefits of two different groups. First of all, in the 72-year history of the teachers' superannuation fund, no group of teachers has been more poorly served than our colleagues who retired before 1982. You have heard a common call from the groups that have been presenting to you for a \$1,000 pension increase for teachers and for a \$500 increase for their survivors. What you have not heard is an economic argument to justify a reasonable request.

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First of all, from 1949 to 1955, teachers contributed 10 per cent towards their pension. Teachers paid six per cent and the government paid four per cent, a far cry from a matching contribution.

Also, in 1972 the assets of the teachers' superannuation fund were rolled over from the old debentures. There was \$700 million in total. It was rolled over at six per cent. The going rate in that year for new money was 8.57 per cent. If you remember from yesterday, on pages 19 and 20 in the OSSTF brief, we saw some of the effects of underinvestment.

In that example, and it was an example that was also used by one of the OTF resource people

yesterday, Malcolm Rowan commissioned a report that clearly demonstrated that a two per cent increase in the real rate of return in the teachers' superannuation fund would have generated about \$8 billion more in assets. Now, \$8 billion just happens to be about twice the cost of the unfunded liability in the teachers' superannuation fund.

Using the question Mr Keyes addressed to me yesterday, that is more than half the assets of the teachers' superannuation fund according to the 1987 Ontario Teachers Superannuation Commission valuation and, using the 1987 data, half the assets by the government-sponsored valuation done last year.

Every active plan member who has been before you is asking the government to go back and correct this social and financial injustice of the past, to provide the pre-1982 retirees with a just reward, a reward they have earned.

To this point in the hearings no group has stepped forward to protect the pension rights of another group of pre-1982 retirees. The spouse of a member who retired prior to 1 September 1984 and died before 31 September 1989 may receive a pension. This is under schedule 1, section 71. This provision appears in the bill, not because the government decided it wanted to improve the prospects, but because of a decision of the Ombudsman.

The committee should consider this provision unacceptable. Surviving spouses will not receive a survivor pension unless they contacted the Ontario Teachers Superannuation Commission in writing. Survivor pensions then would be calculated backdated to that date of written inquiry.

Surviving spouses who called the OTSC or the Superannuated Teachers of Ontario and were told they were not entitled to a benefit, will not have their pensions backdated; they will only have them backdated to the time of written inquiry.

Now we come to another group and that is re-employed pensioners. They also fall victim to the arbitrary conditions of Bill 66. Retired teachers have bought and paid for their pensions. I must here disagree with the STO position of yesterday. No one, not even the Minister of Education, has the right to restrict a pensioner's employment. As a plan member, the plan, the act, defines the teacher's benefit.

As a pensioner, the act also defines the number of days and years of employment. Balderdash. If a pensioner teaches at a community college, university or private school or if that pensioner

goes to New York or Quebec, no reduction occurs in the pension. They are not restricted to 95 days and they are not restricted to three years. They can even become MPPs, draw a teacher's pension and not have the 95-day or the three-year limit imposed upon them. The Teachers' Pension Act will restrict employment and stop paying the pension the teacher has earned. It is simply unacceptable.

OTF Windsor also strongly opposes the time limits for the purchase of credit that Bill 66 has reintroduced. Before 1982—the number comes up again—teachers had two years after they came back from a break or leave in which they could purchase credit. If they missed the time limit, they paid actuarial cost, somewhere between five or six times, depending in those days on sex and age, what they would have paid had they paid within the two years.

The former government of the day made a conscious decision to remove these time limits so that teachers could purchase the credit when they had the money to do so.

Under subsection 94(4) of Bill 66, teachers eligible to purchase credit under the 1983 act must do so before 1 January 1992, and they must apply and they must buy by 1 January 1995. If they do not, then they will have to pay a higher cost. If they violate the 1995 deadline, they will have to pay actuarial cost. We do not know what the actuarial cost will be. The actuaries are still gazing into their crystal ball to determine the cost.

They apply before 1 January 1992 and they must pay before 1 January 1995. So much for financial planning. If you plan to purchase later in your career, as the 1983 act promised you could, too bad. If you plan to purchase after your kids finish university or after you finish paying off the mortgage, tough bananas. Under Bill 66 administrative ease—that is all it is because it was not there in 41—replaces member flexibility. There will also be time limits in the Teachers' Pension Act, 1989, and those have been alluded to by an earlier presentation.

I would like to come to another group, and that is subsection 93(4) on maternity. Under the maternity provisions of Bill 66, women must be pregnant at the time they take the leave. If they become pregnant after they take the leave, then they cannot purchase the credit. It is simply unacceptable. The commission complained about this with the Deputy Minister of Education, but it fell on deaf ears.

Under the present act, under the section in the regulations—what happened in the early 1960s

was that women were forced to resign when they were pregnant. If in the year following pregnancy they came back to a full-time or part-time contract and found themselves pregnant after that, they were allowed to purchase a second year. If, forced to resign, however, they could not find a job after they returned and they had a day or two or 20 or 30 days of supply teaching, and then they found themselves pregnant again, they could not purchase for the second pregnancy. It is simply unacceptable.

The present act either has to be reinterpreted or it has to be rewritten and OTF Windsor would be more than delighted to help the committee with the language.

Now we come to my final diatribe, and I have great difficulty with this one. I will give you a scenario. The year is 1960. Two employees leave Imperial Oil. Both have worked for Imperial Oil for eight years. One has a university degree and one does not. They become teachers. The teacher with the university degree becomes an academic teacher. The other teacher becomes a vocational teacher. She or he had to use those years of industrial experience in order to be certified as a teacher.

Now, 20 years later, comes 1984. What happens is that the teacher who required the pensionable work experience to become certificated may purchase the credit. The other teacher, who was an academic teacher, cannot purchase one day of credit. So much for pension portability.

It is an artificial line that is drawn straight down the middle of teachers. It divides us. It is a fence that divides us. Some of our colleagues can and some of our colleagues cannot. The only difference is a certificate that you received 20 years before. Yes, Mr Keyes, under Bill 66 those teachers will be able to purchase a credit in 1992, but they will purchase the credit at actuarial cost.

What OSSTF and FWTAO have requested is that teachers be allowed to purchase that kind of credit in a two- or three-year window at present cost, with double contributions plus interest. Help us to tear down some of the fences that now exist between teachers and legislation they had no control over.

Also, we have heard the horror stories here of low pensions. One of the problems of low pensions is the problem with portability for teachers who were employees who came into teaching and were not able to bring their pension credits with them.

The Chair: Thank you very much, Mr Armstrong and Mr Henderson. Your time has now elapsed and there are no questions.

Mr Armstrong: No time for questions? What a pity.

The Chair: There is no time for questions, nor any request for questions.

Could we have the representation from Metropolitan Toronto, please? Will you please introduce yourselves.

It would be helpful if we could have the door at the rear of the room closed and no one standing, which is the way we have been running these hearings. It has been quite successful. Room 247 is available for anyone who would like to watch it on a monitor.

The group from Metropolitan Toronto, please.

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Mr Walker: I would like to thank you, first of all, for the opportunity of addressing you this afternoon. I would like to begin by introducing the members of the presentation team: to my immediate right, Maureen Bird, benefits information officer from North York, OSSTF; to my left, Will Braund, president of the Etobicoke Ontario Public School Teachers' Federation; to my far right, Burleigh Mattice, executive assistant with the Ontario Public School Teachers' Federation.

As you already know from our brief, I would stress that we approach this very much as ordinary citizens untutored in the niceties of actuarial computation but possessed of a strong sense of right and wrong, fair and unfair. We have a strong sense that this government is ignoring these basics and treating teachers of Ontario as if they are unknowing pawns in a rather large financial game.

The teachers of Ontario feel that the government is attempting to use them as dupes. It is fair to say that none of us in this room would ever give a bank the power over one's money that the government of Ontario is assuming over ours. The government models of governance are a sham as long as sections 10 and 12 remain unchanged. The concept of partnership with which this round of pension discussions began seems nonexistent now. Another proposed model has the teachers assuming full control of the fund. There is no reference to how much or how it would happen or how long it would take. There is no meat on this particular bone.

Finally, partnership means sharing, a sharing of power and a meaningful dispute resolution mechanism, because partners, we know well, will not always agree or be able to settle their differences on their own.

Before turning it over to Maureen Bird, who will address certain specifics of the bill, I would

like to draw your attention to two items in particular. One is on page 6 of our brief, item 7, the pre-1982 retiree benefits. The previous speaker very eloquently pointed out the economic arguments in favour of it. Obviously we give this our full support; \$1,000 a year for plan members or \$500 a year for their survivors is long overdue.

In the area of long-term disability, I point out several concerns. First of all, the definition of active member, on page 11 of Bill 66, in subsection 1(1) of schedule 1, should have added to it "approved by the administrator or" after the word "agreement" in the third line. This would then correspond to the wording in subsection 6(1) of schedule 1 on page 14. It is important that teachers have the right to work out long-term insurance plans outside of board control, although with the approval of the plan administrator.

Second, the words "who ceases to be employed in education because of a disability and" in subsection 6(1), lines 1 and 2 of schedule 1, should be deleted. Many members stay on long-term insurance plan payments before resigning from a board of education.

I would also suggest that section 20 of schedule 1, on page 19, have a new subsection added to it, and that is, "Despite subsection 1, the amount of the required contribution for an active member who is receiving payments under a long-term income protection agreement on 31 December 1990 is 6.9 per cent of the member's salary after that date." The reason? Many teachers who started on long-term insurance plan payments several years ago with no escalation clauses are expressing difficulty in making top-up payments at the 6.9 per cent level. This is a financial burden they especially cannot afford.

The fourth amendment I would propose is that subsection 22(1) of schedule 1 be amended to allow carriers approved by the administrator to make contributions on behalf of their claimants. The Ontario Teachers Insurance Plan, the largest administrator of long-term insurance protection for teachers in Ontario, is currently handling 57 per cent of all claimants. This might be a better arrangement than diversifying the responsibility among all the school boards of Ontario.

Some teachers on LTIP have been dissociated from their former employer for many years. Many teachers who have left because of stress-induced problems would prefer not to make contact with their former employers.

At this point I would request Maureen Bird to go into further details of the legislation and changes we propose.

Ms Bird: Referring to page 4 of our brief, for the last five years I have been working doing one-on-one counselling with teachers in North York. Most of it has been in my free time, but I did it full-time for five months last year. I am very much aware of the concerns of the individuals whom this plan is supposed to address and whose funds are in this plan.

If there are going to be contribution rates, there should not be any loss of benefits. Many of the things I am addressing have to do with the loss of benefits. They also have to do with people who have entered into contractual obligations for teaching, with certain expectations under the pension plan, and are finding that, midyear, the pension plan is changing, to their detriment. Anything that changes to their detriment is what I would consider an unjust law.

Specifically, those people who are doing work for a board outside of the normal day school program are not necessarily just night school and summer school teachers. Some of them are involved in programs such as Adventure Place in North York, which is a special school to deal with emotionally disabled and physically disabled children from the ages of about three to seven.

This is a 12-month program for these people because they need that service. The teachers are on a 10-month contract, but part of their obligation is to do extra work through the summer program with them so that there is a continuity of emotional support. These people should not have their income affected by a necessity of refunds. This is section 27 of schedule 1, and it should be deleted completely.

A major problem is that the formula for repayment of refunds means that the teachers end up with an annualized salary less than their day school salary, and that is unjust. It also affects people who have tendered their resignations in this school year, based on income from their extra employment, and will find after the fact that this binding contract that they are in is not going to help them with their pension and will have detrimental effects. This is an unjust law.

There is a concern with some of the wording for people who are doing part-time teaching or who go on LTIPs during the school year. There were some major improvements in the rewrite from Bill 41 to Bill 66, but there is still one major problem that we have discovered. That is, if a part-time teacher leaves teaching at the end of January, halfway through the year, and would normally have an annualized salary of \$50,000, the formula in the act gives him an annualized

salary for that period of only \$25,000. I feel the section stating a different annualization for these people should be deleted. That is subsection 14(3) in schedule 1.

We very much support the current window of 35 and out. That is something that is allowed under the income tax amendments that were tabled in the federal House yesterday. Those recommendations, if they are the same as the ones I worked on last year, will also allow a pension based on more than 35 years of service, but will not allow contributions to be made on service that goes over the number of years for which a pension can be paid. That would cause major problems and should be addressed.

Pension deferral: People who have left teaching prior to age 55 currently have the right to do a certain amount of supply teaching or employment in education without any loss of escalation benefits. There was no mention of this in Bill 41. The section from the current regulation 423-27 was added as subsection 79(5) of schedule 1 to this bill.

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However, there is a specific clause in the Teachers' Superannuation Act itself, section 54, that refers to "in a school day," and that phrase was omitted when they lifted the wording from the regulation, because it is not in the regulation; it is in the act. Subsection 79(5) needs the addition of the words "in a school year" after "21 days." Most of these amendments are also in the OTF brief.

Teaching after retirement is also a major concern for many people. Again, I am dealing with people who have entered into contractual agreements to teach for this school year in certain subject areas where there was a teacher shortage. They understood they would be able to teach for 95 days. The wording was not clear. Some of them signed their collective agreements last June.

They are going to find that under subsection 3(4) of schedule 1, if they try and supply teach one day next year, they will have to give up that day's pension, and a supply teacher's salary is less than the pension for that day. It is going to cost them to assist in education on a short-term basis. We have a critical need of supply teachers in Metropolitan Toronto right now. In North York secondary schools we have 150 supply teachers, and we need 200.

We are in desperate straits. We need that bank of retired teachers. We need that bank to the extent that there should be no penalty at all. I believe the last party addressed this as well.

There is no way that people should be penalized for teaching after retirement, because they are not penalized for anything else. I think the previous speaker made that eloquently clear. I believe that subsection 3(4) of schedule 1 should be amended as suggested by OTF.

I am also very concerned about the time limits. Gerald addressed that extremely well. My particular concern on the time limits is for a young teacher, specifically female, who in her first 10 years of teaching may have three maternity leaves, may have trouble in the teacher shortage getting back one year. This happened to me. I supply taught for two years before I got back to a full-time job. They need longer time periods than the three years in order to have their finances cleared up. Within that three-year period they could very well be off again on a subsequent maternity leave.

I apologize for speaking quickly. There are a lot of points to cover. This is a very complex act that you people have to deal with.

Mr Braund: Metro teachers are particularly concerned that there be a dispute resolution mechanism in the legislation. They can appreciate the fact that adjustments are needed from time to time to guarantee the solvency and level of benefits in their pension funds, and they are prepared to accept subsequent increases in their contribution rates when they are justified. However, the teachers have a great deal of difficulty accepting the sole right of the Lieutenant Governor in Council to make decisions involving their contributions or benefits.

Under the proposed legislation, the cabinet, after meeting with the teachers' representatives, could walk away and make whatever adjustments it saw fit, without even referring the matter to the Legislature for consideration. We strongly believe that a binding resolution mechanism can and should be included in the legislation so that an impartial arbitrator could be asked to make an informed decision when the Catholic teacher representatives cannot agree.

The government needs to be particularly careful that in difficult times it does not abandon its role as employer and adopt its role as legislator. It must be seen to function as an employer in a way that it would want other employers in Ontario to function. The government, in other words, should not allocate itself powers that it would deny to other employers.

Teachers' pensions, as a result of the large contribution they make to them each year, are one of their most important assets. Teachers have paid and will continue to pay a significant portion

of their income to ensure their future security. They cannot be expected to blindly trust the Lieutenant Governor in Council to make decisions that could cost them hundreds of dollars in a given year and many thousands of dollars over the course of their careers without the opportunity for a neutral third party to decide if the changes the cabinet proposes are indeed justified.

Ladies and gentlemen, on behalf of the Metro teachers, I thank you for the attention and consideration you have given us today. I believe we have a little bit of time left, if the committee has any questions.

The Chair: One minute. Mr Allen, I guess it is your turn.

Mr Allen: Well, I would like simply to ask a question. Obviously, a great deal of representation has been made to government on a number of very, very important points pertaining to teachers' pensions, considerably just in demand and rational in argument. Why do you sense you are meeting such a brick wall on the other side of this particular discussion?

Ms Bird: From our awareness in the classroom level, we are not getting a feeling that the government is willing to settle on a dispute resolution mechanism and we see that we make large contributions to this fund of \$17 billion and we need to have some way to separate the government as employer making the contributions and the government as legislator setting the act.

Mr Allen: So they are afraid of the inequities in the plan coming up to haunt them by virtue of a joint management scheme. Is that right?

Mr Walker: I would not attempt to analyse the motivations.

The Chair: Thank you, Mr Walker. That might be very wise. Thank you very much, members from Metro Toronto, for your participation.

Could I have the delegation from Cornwall? I am sorry, I do not have any names at all from your delegation, so if you would please introduce yourselves, that would be very helpful to us all.

Mr Moss: On behalf of the 2,000 teachers of Stormont, Dundas and Glengarry—and with due respect, I would correct the record. We do not only represent the city of Cornwall but the three counties of Stormont, Dundas and Glengarry.

The Chair: Thank you very much. We do have your brief then.

Mr Moss: I would like to thank the committee for this opportunity to address our concerns to you with respect to Bill 66.

My name is David Moss and I represent the members of the Ontario Secondary School Teachers' Federation, District 21, Stormont, Dundas and Glengarry. I would like to introduce my colleagues: Brenda Waddell, president of the Women Teachers' Association of Stormont, Dundas and Glengarry; Paulette Hébert, présidente, l'Association des enseignantes et des enseignants franco-ontariens, secteur secondaire catholique, SDG—and for the members of the committee, Ms Hébert will be speaking in French for her part of the presentation—and Albert Carr, vice-president of the Ontario Public School Teachers' Federation. Miriam Wheeler, the president of the Ontario English Catholic Teachers' Association, is involved in another type of negotiation today and felt that she would rather stay there, so she sends her greetings and gives full support.

It is unusual, to say the least, that a group of classroom teachers from far eastern Ontario would take time from their classrooms to address a standing committee of the Legislature of Ontario. We have come today to convey to you the total displeasure and anger of our colleagues in SDG over the proposed legislation to amend our superannuation act, and I do not use the word "anger" lightly.

We find the present legislation before this committee offensive. In the very limited time provided, we will outline our frustration with respect to two items, the equal partnership model and the dispute-settling mechanism. I warn the committee in advance that without substantial amendments to this bill dealing with these two issues, the teachers of SDG guarantee this government will never be allowed to forget Bill 66.

We have been frustrated for almost two years now as we have watched the debate between the government and OTF over the equal partnership issue. The words of the Treasurer, Education ministers past and present and the Premier (Mr Peterson) on the need for an equal partnership are not echoed in Bill 66. Sections 9 and 12 of the bill give a whole new meaning to the word "equal," a meaning we are not familiar with and, I can guarantee you, a meaning we have no intention of accepting.

It is not equal when the cabinet will have the power to (a) determine the methods or assumptions to be used to calculate pensions and benefits and (b) rescind the plan and replace it, etc. These sections must be removed and replaced with an equal partnership model as proposed by the Ontario Teachers' Federation.

Mr Carr: To quote briefly from the OTF brief, when OTF agreed to pursue the government's proposal to enter into an equal partnership in which all risks, rewards and responsibilities were to be shared equally, it was known that major concessions would be required from both parties. The federation would have to be prepared to assume an equal share of risk through joint sponsorship.

Government would have to relinquish its absolute control over teacher pensions. The federation, by accepting joint sponsorship, has demonstrated its willingness to enter into a truly equal partnership. On the other hand, the government, by refusing to accept the dispute resolution mechanism, has demonstrated its resolve to retain absolute control over teacher pensions.

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Members of this committee have asked numerous questions of those presenting briefs on behalf of OTF, perhaps the most salient and pertinent being: Why does OTF object to a double veto form of equal partnership? In some cases, I think this question has been asked to imply that there is no real problem here; that we do have an equal partnership. The answer, though, is twofold but straightforward.

First, such an arrangement is an ironclad guarantee of inaction on any substantial issue. In this day and age, any organization that cannot adapt quickly to changing circumstances quickly becomes outmoded.

Second, while under the legislation the government partner could stonewall any proposed changes to which it was opposed, can any thinking person seriously believe that a provincial government of any stripe would indefinitely tolerate opposition from its partner when all it has to do is legislate the opposition away?

On that basis alone, we are already faced with very unequal equals. Pierre Trudeau observed once that for Canada to share a continent with the United States is akin to sleeping with an elephant. What happens if the elephant rolls over? The government's model of equal partnership puts the teachers of Ontario in the same position as Canada vis-à-vis the United States.

It is true that section 10 of the bill provides for consultation with an unnamed bargaining agent, not OTF, as we would like, but the operative word in that clause is "may." We certainly do not see "must."

Even if the consultation takes place, this guarantees little. It was Winston Churchill who observed that: "The word 'consultation' is a very

elastic term. One can always consult a man about whether you should chop off his head, and after he says, 'I'd rather not,' you can still cut it off."

Ms Waddell: The teachers of Stormont, Dundas and Glengarry cannot accept this government's intention to confer unprecedented power on cabinet. This bill gives cabinet the power to alter, to amend and even to replace the plan without referring the matter to the Legislature. By concentrating all power in the cabinet, this bill endangers our perception of democracy, a perception that confers on the Legislature the power to legislate. This bill takes away from the members of the Ontario Legislature and from the people of Ontario the right to be aware of the intentions of the government on, and the right to object to, any proposed legislation concerning pensions. This bill allows power to be concentrated on a small group of members from the governing party, which may amend the plan without even having to publish these changes. Are these powers not more suited to emergencies, disasters or even war?

This surely is a matter of great concern for all members of the Legislature who value parliamentary tradition. Are members not elected to voice the concerns of the people of Ontario and to enact the laws that are of benefit? Is it not also the call and the duty of the Legislative Assembly to act as a buffer to ill-conceived cabinet decisions such as this bill? Are members of this committee prepared to hand over their power to cabinet? Where are the checks and balances one expects to find in a responsible government?

Instead of power concentrated in the cabinet, we request that an independent group be given these powers, with truly equal representation from both the government of Ontario and the Ontario Teachers' Federation.

Mme Hébert: Les enseignants et les enseignantes de Stormont, Dundas et Glengarry n'acceptent pas la position du gouvernement qui refuse l'arbitrage lors des disputes en matière de la caisse de retraite. Nous croyons que les raisons que donne le gouvernement pour expliquer ce refus de l'arbitrage sont fondamentalement erronées.

Le gouvernement maintient que la caisse au complet serait sujette à l'arbitrage. Ceci est faux, puisque seules les modifications aux contributions et aux bénéfices y seraient sujettes. Le gouvernement doit comprendre qu'il est l'employeur dans ce cas-ci et qu'il ne peut se prévaloir d'une autorité qui n'est pas accordée aux autres employeurs de la province lorsque ces derniers négocient les pensions avec leurs employés.

Nous exigeons d'être partenaires égaux ; nous exigeons un mécanisme de résolutions de disputes bien défini.

Les articles 9 et 12 assurent que le partenaire-gouvernement, lorsqu'il désire apporter des modifications au plan, jouit d'un droit de veto en s'appuyant sur son pouvoir législatif.

Les enseignantes et les enseignants de Stormont, Dundas et Glengarry n'ont qu'un seul message pour ce gouvernement, soit : « Nous ne pouvons accepter votre définition d'égalité. »

The Chair: I have two people who would like to ask questions. Would you be willing to receive those, or are you going to use your full time?

Mr Moss: How much time do we have left?

The Chair: I would say you have about three to four minutes.

Mr Moss: We will take one minute.

The Chair: Okay, to sum up.

Mr Moss: Under the proposed OTF amendment, the government and the federation would mutually select a chairperson appointed for a definite term to adjudicate disagreements at the corporation level. This does not mean solely and only arbitration as the means that would be used. This model truly guarantees equal partnership and we commend it to you.

We therefore recommend:

That Bill 66 be amended by the addition of a subsection to initiate a resolution mechanism that provides for binding arbitration on matters of changes to the existing premium or benefit improvement;

That the committee recommend to the Legislature the implementation of an equal partnership between the province of Ontario and the Ontario Teachers' Federation, based on the OTF model;

That section 9 of the act be struck out; and

That section 12 of the act be struck out.

As the teachers of SD and G, we believe OTF has the expertise and talents to work with the government to develop a pension plan that meets our needs as pensioners and future pensioners and the government's need to protect the financial credibility of the province. We reject totally the Treasurer's claim that this money is public funds. This is our deferred salary, which we have negotiated with the government as our employer. The teachers of SD and G support fully the recommendations of OTF to this committee. We ask that you recommend to the Legislature the significant changes they suggest.

In the spring of 1989 we forwarded a petition with close to 1,000 names to this government,

supporting the position in our brief. If you would like, we can send you another one before Friday.

Mr Jackson: Thank you for a passionate presentation. I know my colleague from SD and G presents his positions in this regard with equal vigour in caucus, so I was aware that you were going to be presenting in the fashion in which you were presenting today.

I have a two-part question. One gets a clear sense that you will not accept a joint partnership arrangement as proposed by this government in Bill 66 unless there is a dispute resolution mechanism. Is that what you are saying?

Mr Moss: Definitely.

Mr Jackson: This is as I had suspected in your presentation and what I have heard from the attitude or the concerns down at SD and G. Would you recommend that we not rush this bill through before next Wednesday but that, in fairness, we examine alternative dispute resolution models, which I am now finding out was not seriously or meaningfully undertaken by the government?

Mr Moss: That would certainly be our contention. We see no need to rush this bill through. We have been a year and a half negotiating with the government—trying to negotiate with the government. The government has said it has proposed an equal partnership model. OTF has proposed an equal partnership model. If we both believe that such a thing should exist, surely these two groups can get together and come up with truly an equal partnership model. There is no need to rush this bill through with one party's idea of what equal partnership is.

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Mr Jackson: Just in conclusion, Mr Villeneuve, my colleague, brought to my attention earlier today that in this building, as we speak, the government has mandated that the standing committee on administration of justice is considering matters of alternative dispute resolution, yet in this standing committee on social development we are being told that the government does not have the capacity to examine whether an alternative dispute resolution for teachers' pensions is in a justice framework or not because we are in the social development committee. Can you understand that contradiction at all?

Mr Moss: No, I do not.

Mr Reycraft: There was quite a bit of discussion and dialogue in the committee yesterday about the intent of the partnership model and I indicated then that it is the government's intent that under the partnership model, if that was

selected, cabinet would not have authority to alter either the benefits or the contribution rate; only under the partnership model could that change.

I understand from what you said today that you still view that as unacceptable because it does not provide for binding arbitration. Is your main concern about the need for binding arbitration based on a scenario where a surplus was identified and a government refused to improve the benefits and instead opted to have the contribution rates of teachers and government reduced? Is that your concern?

Mr Moss: No.

Mr Carr: No, that would be a hypothetical concern.

Mr Reycraft: What else could happen?

Mr Carr: First of all, you are looking at issues that have been brought up in other briefs, 35 years and out, all kinds of major issues that have to be resolved at some point in time down the road to make this pension plan flexible and fair to equal partners.

Our major concern right now, though, is the fact that if the government—and you still used the words “equal partnership”—is really talking equal partnership, why are we ramming this thing through before 20 December when one partner is opposed to so much of it; and if it is not the government's intention to change benefit or contribution rates by itself in cabinet, then why will it not change the wording of the relevant sections to “Lieutenant Governor in Council and OTF as bargaining agent entering into consultation”?

Mr Reycraft: The simple answer to your question is that if we delay another year, the unfunded liability in the adjustment fund will grow. There is no commitment from the Treasurer at this point in time to assume responsibility for that unfunded liability. He has agreed to accept the unfunded liability up to the end of this year.

Mr Carr: You can go back to the brain trust in OTF on that, but there is also some question as to how big the unfunded liability is and whether the actuarial assumptions on which the government is basing that figure or calculation are even correct.

The Chair: I am very sorry to have to close this off, but you are now three minutes into the next presentation.

Ottawa-Carleton, please? Your faces are a little more familiar than some of the others. May

I ask you to introduce yourselves in speaking order?

Mr Ouimet: On my far left is Kathryn McVean from Ottawa-Carleton; on my immediate left, Penny Hammond, Ottawa-Carleton; and my name is Bob Ouimet, from Ottawa.

Our presentation today is submitted on behalf of approximately 8,500 active teachers and 1,475 superannuated teachers in Ottawa-Carleton. We are pleased to take advantage of this opportunity to comment on the proposed legislation, Bill 66—an opportunity, we would like to point out to this committee, that we will lose in the future should this proposed legislation not be amended.

We ask that this committee hear our concerns and act upon our recommendations in order to ensure clarity and entrench the democratic rights of Ontario citizens within the legislation.

The 9,975 teachers we represent are in full support of the position of the Ontario Teachers' Federation. In our brief, we have addressed some of our major concerns with respect to the proposed legislation for teachers within our jurisdiction, Ottawa-Carleton. We will highlight the following: First of all, ownership; second, the role of the government; and third, equal partnership.

Ownership: Section 10 of the proposed act suggests the possibility of an equal partnership between the government of Ontario and the teachers in the governance of the teachers' pension plan. Section 11 suggests the possibility of teacher control of the governance of the teachers' pension plan. Sections 9 and 12, however, imply by the powers vested in the Lieutenant Governor in Council that the government of Ontario has the right to sole and exclusive governance of the teachers' pension plan. All provisions for the teachers to participate meaningfully in the governance of their pension plan have been removed by the inclusion of this section.

The Canadian courts have ruled that pensions are deferred income. Therefore, it is only reasonable and just that teachers participate as true, equal partners in the governance of this deferred income. The government has repeatedly referred to its fiscal responsibility to the taxpayers of this province. Teachers and their families constitute a large percentage of the taxpayers. The teachers contribute to the fund not only as plan members but also as taxpayers. The government must remember it has a responsibility to this group of constituents.

The teachers in Ottawa-Carleton are adamant—and I say adamant—in their belief that both parties who pay equally into the plan should have and shall have equal participation in the decisions concerning the plan. It is not only democratic; it is a principle of fair business practice.

We recommend that the proposed legislation be amended to ensure equal governance between the teachers and the government of Ontario of the teachers' pension plan.

Ms Hammond: The role of the government: As the previous speaker has said, the teachers of Ottawa-Carleton oppose the decision of the government to put the pension plan in the absolute control of the government, as proposed in sections 9 and 12.

We must go further, however, to state that we strongly oppose the fact that this absolute control has been granted to the cabinet. We perceive this as being a diversion from the precepts on which our government is founded.

The proposed legislation empowers the cabinet to unilaterally change, delete or restrict the terms of our pension plan. It empowers the cabinet to do this regardless of a plan negotiated between the parties and to do so without notice or public hearings.

To restrict the opportunity of citizens to respond to changes in legislation which directly affects those citizens is an erosion of our rights and the democratic process. This concept is absolutely intolerable.

1700

The teachers in Ottawa-Carleton cannot accept the fact that this government believes itself to be above the courts. Through this proposed legislation, the government of Ontario will allow itself the power to do what the courts have disallowed to other employers.

We strongly recommend that all references to absolute control by cabinet be deleted from the proposed legislation.

Ms McVean: With respect to the equal partnership, in his report *A Fresh Start*, Dr David Slater, commissioned to study the teachers' superannuation plan, proposes a full partnership and joint trusteeship between the government and the Ontario Teachers' Federation.

At the time this concept seemed attractive to both parties. The proposed legislation, however, indicates the right of both partners to consult and to mediate but does not provide for partnership in the resolution of an impasse. One partner is given arbitrary rights over the other.

The Ottawa-Carleton teachers support the Ontario Teachers' Federation in their belief that

the proposed legislation negates the concept of full partnership. There cannot be an equal partnership if at any step in the process one partner assumes power over the other.

The Treasurer has stated that he cannot relinquish his responsibilities to the taxpayer by allowing an impartial third party to resolve a dispute involving taxpayers' money. Yet the government has used arbitration, the very dispute resolution mechanism suggested by teachers, to resolve impasses with its public sector employee groups.

It is worthy of note that the need for a dispute resolution mechanism was the very point argued by this government in the free trade debate at this very time last year. Is it not logical to expect the government to include dispute resolution in its proposed pension legislation?

Teachers, as government employees, should not be penalized when their employer, the government, abandons its responsibility as employer to assume its role as legislator. Neither should the government assume powers it does not extend to other employers.

Therefore we recommend that the proposed legislation be amended to provide for a full and equal partnership in the teachers' superannuation plan. We further recommend that the proposed legislation be amended to ensure that a dispute resolution mechanisms acceptable to both parties be included in the legislation.

Mr Ouimet: Here is our conclusion, which is found on page 12 of our brief.

The teachers in Ottawa-Carleton recognize and appreciate the government's process of dialogue that has allowed us to present to you today some of our concerns relating to Bill 66, and we sincerely hope that the final legislation will allow this process to continue into the future.

As teachers, we respect and promote partnership as we carry out our responsibilities in education. We are confident that you will hear and respond to these principles as we have addressed them in this brief.

On pages 13 and 14 of our brief we have listed the summary of recommendations and from page 15 onward we have included the pertinent sections of the proposed bill.

The Chair: Mr Keyes, please. We have about five minutes.

Mr Keyes: That is far more than I will need.

The Chair: Well, not just for yourself. I have other questioners.

Mr Keyes: I had an impression you would not give me that length of time.

I think it is today, and particularly today, that we have had most of the emphasis of the briefs focusing on sections 9 through 12. I think we should just quickly reiterate that we are not basically at odds with any of the presenters today in these sections. They are worded as they are in the bill at the moment in order to allow for the three options. But a week from tonight we expect to be making that appropriate recommendation as to which one of those three options we will be following, perhaps next Monday.

When that happens, depending upon which one is chosen, there will have to be some amendments made so that the concerns that have been raised consistently this afternoon with regard to the power in cabinet are not there in the event of partnership being selected as the option. I asked for, and we distributed at the beginning of today's meeting, a legal opinion to show any change in wording that would have to be taken to guarantee that no changes can be made unilaterally by cabinet in the event that we have a partnership between ourselves.

The only things that will be able to be changed will be those on which we have reached mutual agreement. I give you my word on that. As I said, again reiterating, section 9 is there as it is if we are into government sponsorship. But you have got to read in context sections 9 through 12 and then realize that amendments must be made, dependent upon the options selected.

It is my personal hope and the wish of the government that we will be able to seek support of this committee for a partnership model. Then, should that partnership model be selected in a week's time, there will be appropriate amendments to clearly spell out and show that no changes in any way can be made by cabinet that have not been fully agreed to by the two parties to the agreement.

Mr Allen: I appreciate the directness and clarity of the brief from Ottawa-Carleton. It is precisely because you are from the seat of another government that I put a question to you that perhaps at first glance may sound a little bit unusual.

Does not the government's proposed partnership model remind you of the most unsuccessful period of Canadian government? Namely, the period of the union, which lasted a bare decade before it fell into a total impasse because of a double majority principle and when there was no dispute settlement mechanism except the final arbitrary judgement of the crown. We had to dissolve that system speedily in order to establish something that you people in Ottawa benefited

from, namely, the choice of another confederal system and a new seat of government.

Mr Ouimet: History does repeat itself.

Mr Allen: History does repeat itself indeed.

The Chair: Is that your question, Mr Allen?

Mr Allen: That is my question, yes.

The Chair: Okay. Well, that is a very happy note to end on. Thank you very much for coming down from Ottawa-Carleton to present your concerns to us.

May I have the representation from Thunder Bay now, another group that has travelled quite a long way. Would you please introduce yourselves.

Mr Inksetter: We thank you for offering us the opportunity to appear and speak before this committee. We are proud to be able to participate so directly in the democratic process, to exercise our rights as citizens to speak directly to the lawmakers, who are in turn responsible to us and our fellow electors.

We left Thunder Bay at minus 28 degrees this morning and we are returning home to a forecast minus 30 tonight. We welcome the brief respite that your warm reception here affords us.

Mr Jackson: The presentation is not over with yet. You have some interesting questions to look forward to.

Mr Inksetter: Our brief is the forest green one.

The Chair: That is correct; it stands out.

1710

Mr Inksetter: First, maybe I should introduce our group. My name is Paul Inksetter. I am a teacher of physics and chemistry at Hillcrest High School, representing the Ontario Secondary School Teachers' Federation here today.

To my right is Jackie Dennis, representing the Superannuated Teachers of Ontario, who retired after 36 years of service as a geography teacher with some time out as a curriculum consultant. Beside Jackie is David Bryan, a grade 8 teacher at Edgewater Park School in Thunder Bay, representing the Ontario Public School Teachers' Federation.

To my left is Renie Karam, who is a teacher of grade 5 at Sherbrooke School and represents the Federation of Women Teachers' Associations of Ontario. Beside Renie is Bob Greer, the principal of Holy Cross School, under the Lakehead Roman Catholic Separate School Board, representing the Ontario English Catholic Teachers' Association here today. To my far right is Joan

Byrne from the FWTAO, who is shepherding us through our little visit here today.

In our brief, which is quite brief, we concentrate on four points, or you might almost say three, because the first two, control and governance of the plan, are closely related. Mr Bryan will speak briefly to that. Under benefits to teachers, Ms Karam and I will both speak briefly to that. With regard to the retired teachers, Ms Dennis will speak to that. If there is time left, I will make a very brief summary at the conclusion.

Mr Bryan: I wish to convey the deep distress of the teachers of northwestern Ontario over the government's failure in Bill 66 to address a wrong inherent in the existing pension legislation.

A teacher in most parts of this province can, if he or she so chooses, purchase a home. This asset, together with a pension, will represent his or her only significant assets for the most part, and this is as a result of a career that may span 35 or more years.

We protect the equity in our homes through ongoing maintenance programs and frequent reviews of our home owner insurance policies. Under current legislation we cannot similarly ensure the value of our other principal asset, our pensions. This we must leave to others. We are forced to trust to the goodwill of the government and persuasive abilities of our OTF representatives.

We have spoken to our local MPPs, the Honourable Lyn McLeod and Taras Kozyna, and have been told that the government's intentions are to continue to provide the best possible pension for Ontario's teachers. Further, they have assured us that the government of Ontario would do nothing to jeopardize our retirement security. I am acquainted with both Thunder Bay MPPs personally and have no reason to doubt the sincerity of their assurances.

But can we be guaranteed that future governments would be similarly disposed? We are discussing legislation controlling billions of dollars and the financial security of thousands of Ontarians.

You now have an opportunity to provide the teachers of Ontario with a right that they have been too long denied: true joint ownership in their future security. We urge you to recommend amendments to this legislation that will ensure the provision of a dispute resolution mechanism in Bill 66. We must have a voice that will be heard by our partner, the government of Ontario.

Ms Karam: Thank you for allowing me the opportunity to address two issues that many regard as women's issues but really are far more global than affecting only women.

The first regards the proposed changes to the parenting-leave clauses. We support the government's increase of parenting leave to two years per child. However, the government is introducing time-line restrictions and purchasing credited service.

The government will match the woman's contributions for three years only. After that time the woman must pay actuarial costs, which will double contributions, plus interest, plus this, plus that. This method will burden participants who are teaching as well as caring for a young family.

The government has abandoned its commitment to provide financial support to parenting absence. In fairness, the time-line restrictions should be deleted and the current policy of purchasing credit by paying the cost of contributions plus interest at any time up to retirement should be maintained.

The second issue is a proposed change to the membership of occasional teachers in the pension plan. It is only because of supply teaching dates, which are annualized, that many women are able to retire without any penalty. If occasionals are not required to participate in the plan, at retirement many of these women will not have adequate years of service to enable them to retire without penalties.

A young teacher beginning her career rarely considers the effect her decisions will have in the future, especially if the future is 20 or 30 years away. All occasional teachers should be members of the plan.

Mr Inksetter: The present Teachers' Superannuation Act defines "salary" as "remuneration paid for services in employment in education." The proposed new act removes any work done beyond the normal school year from pensionable earnings and in fact applies a formula that will result in a reduction in the pensionable earnings of a teacher who undertakes any such additional work assignment.

We fail to understand the rationale for such a regulation. No other form of employment in education is similarly singled out for exclusion from, or penalty applied to, pension credits. Obviously, if such a provision is inserted in the new act, no teacher could afford to take on extra assignments within the last five years of teaching. I must add, who of us knows for sure when

he or she has entered the last or best five years of a career?

In our school board last year, the principal of continuing education had great difficulty hiring a chemistry teacher. This is a high-demand course for persons who wish to return to upgrade their high school education in order to pursue tertiary studies in health care fields. Women in particular who, for whatever reason, did not include advanced double senior science courses in their initial high school education form a large segment of this group. The proposed restriction on pensionable earnings will make even more difficult the recruiting of teachers for this and other high-demand courses.

We currently have a teacher within three years of retirement who is teaching senior mathematics at night school. He was not anticipating a change in these regulations halfway through the year.

We see no valid reason for removing or reducing this benefit at a time when our contribution rates are being raised. The teachers' superannuation fund was able to accommodate this clause and still operate at a surplus.

We urge you to consider the implications of this proposed change and to recommend deleting this provision from the proposed bill.

Ms Dennis: Our brief makes reference to the needs of the pre-June-1982 retired teachers, and I would like to take a few moments of your time to put a human face on the words in the brief.

Just one week ago I attended a Christmas function of the Superannuated Teachers of Ontario members in the Thunder Bay area, and I wish you had been there with me. There were about 200 members in attendance. I looked around the room and saw many people whom I knew personally who retired in the 1950s and 1960s. I could not help but feel badly for them because they were the people who were hit with the double whammy, so to speak.

They retired when salaries were very low and there was a small number of dollars on which to calculate a pension and they still are suffering under the best seven instead of the best five of people who have retired more recently.

The guest speaker at the function had occasion to ask those assembled who of the group were engaged in voluntary community service. At least 80 per cent of the people in that room put up their hands. Those folks may have retired from teaching, but they certainly have not retired from serving their community.

It is very disappointing that Bill 66, while increasing contributions from active teachers, does nothing to resolve the lot of those people in

particular who are living on very small pensions. They deserve a lot more, and our group recommends to this committee that you recommend amendments to the bill to make some provision for our older, more senior retired teachers.

Mr Inksetter: You are deliberating changes to the Teachers' Superannuation Act, but you will notice that in our brief we refer to this fund as our life savings. This is our nest egg, our sock under the bed, and this is why the issue of governance and control of benefits under this plan are so important to us.

Mr Keyes: I was just wondering whether the delegation would agree on the philosophy that, in order to secure benefits for all of us, whether it is pre-1982 retirees or the rest, we should agree to be sure it is fully funded?

Mr Inksetter: Absolutely.

Mr Keyes: Would you have knowledge of the actual costs for increasing the benefits as has been requested in the majority of our briefs?

Mr Inksetter: We would prefer that you get that information from our parent group. They are the actuarial experts. I understand the cost of that particular benefit, the increase to the pre-1982 retirees, is very small.

Mr Keyes: I was just trying not to single any one of them out if I could, but I think we do know that the cost would require approximately an additional 0.6 per cent from each contributor, a participating teacher and the government, and does amount to \$838 million.

I see the people in the audience shaking their heads, but we will gladly provide Mr Harris with the cost estimates of those proposals.

Mr Jackson: You throw in dispute resolution and you might have a deal.

The Chair: Mr Keyes, you may want to save this until the next presentation and the final summation on the OTF.

1720

Mr Allen: Just to go back to an old chestnut that has been around ever since I have been involved in these discussions, since I came to the Legislature in 1982, and that is the double standard around teachers who came late to the profession, who had been engaged in previous occupations and who now are subdivided into those who have university degrees and those who came out of other occupational backgrounds, can you tell me what justifications the government is giving to you these days? I have heard various arguments in the past that seems to get it off the

hook one way or another, but can you tell me what justifications the government is giving you these days as to why it cannot at this point in time eliminate that double standard with respect to those particular teachers?

Mr Inksetter: Well, the government has not justified its actions to me, Mr Allen. I do not know if it has at any other level of negotiation, but certainly we have no indication why that double standard should exist.

Mr Jackson: On a rather light note, when you suggest that the two incumbent Liberal members have given you sufficient assurances that they are going to protect you, are you suggesting that somehow you could live with joint partnership without dispute resolution until there is a change in government? Was I to take that from your presentation?

Mr Inksetter: That is—

Mr Jackson: I did say that was on a lighter note.

Mr Inksetter: Mr Jackson, we do not want to go into the record of the previous government and the teachers' superannuation fund.

The Chair: Thank you very much for your presentation. It is nice to end on a little bit of a lighter note.

If I may now have the representation from the Ontario Teachers' Federation for the summation, it will be a 30-minute presentation. Hopefully there will be some time allotted for questions, but of course that is all in your hands. You may want to use your 30 minutes for presentation. Would you like to begin.

ONTARIO TEACHERS' FEDERATION

Ms Polowy: have a couple of different people with me at the table today, but they are certainly not people that the committee will be unaware of. I have with me today the secretary-treasurer of OTF, Margaret Wilson, and our executive assistant, David Aylsworth.

Before I begin the summation I must emphasize to you our frustration in dealing with our Minister of Education (Mr Conway), who has been called the phantom of the opera by one of his colleagues. The minister has been phantom-like in many ways. He certainly has not appeared here during these committee hearings. OTF has been unable to schedule many meetings with him, two in total since he became the Minister of Education.

On 27 October, at a regularly scheduled quarterly meeting with the OTF executive, we spent an hour convincing the minister to meet

with us on pensions. A second meeting was held on 15 November, a single two-hour meeting to clarify issues. The minister refused then, and refused again by letter on 1 December, to meet with us.

All our attempts to resolve the differences separating us have met with rebuffs. That is not responsive behaviour towards the teachers of Ontario by the Minister of Education.

Let me begin the summation by thanking the members of the standing committee once again for the opportunity to present the concerns and views of the teachers of Ontario about our pensions.

The very presentations by the provincial affiliates and the local branch affiliate groups have demonstrated to you not only our common concerns but also the depth of knowledge and understanding of the teachers of this province about our pension fund.

The democratic legislative process, so I have been told, is enhanced by the committee hearing process. I have been reassured that these hearings are not simply pro forma but indeed one more opportunity for teachers to influence the decisions about amendments to Bill 66 which will be brought forward to the Legislature for third reading. Therefore, by convincing argument and persuasive delivery, we have attempted to present fairly our preference for a mutually acceptable partnership model for the future governance of our pension plan.

As a result of the talks initiated in September of 1988 at the invitation of the Treasurer, OTF has become involved in contemplating real reform in pension management. Once the government had offered to pay the unfunded liability which exists in the adjustment fund, we agreed to the merging of our two pension funds. We agreed to placing the new plan on a fully funded basis, we agreed to the diversification of the assets of the plan, we agreed to consider a reasonable increase in the contribution rate and we agreed to the joint sponsorship of the plan for the future within an equal partnership.

Teachers were willing to share, in the future, risks of plan sponsorship, a major concession for any group of employees. I believe that we have agreed to major changes in the management of the pension fund, but what we cannot agree to is a partnership in which one partner is more equal. As a matter of fact, in our only meeting with the Minister of Education on pensions we indicated a willingness to accept the proposed contribution rate increase in order to obtain a dispute

resolution mechanism which guarantees the integrity of a partnership.

I have heard much discussion around the issue of the unfunded liability. Is it the government's responsibility or not? I know one thing for certain. There may be no legal responsibility under the Pension Benefits Act for the government as plan sponsor to pay off the unfunded liability, but there certainly is a moral obligation.

The Premier himself told our former president Rod Albert, Jim Causley and me that the government would pay off the unfunded liability because it was the right thing to do. Government offered payment of the past debt because it recognized it was its responsibility to do so.

Another area which is still unclear is the size of the adjustment fund liability. Separate valuations, as have been proposed, would clarify the size of the bill and whose money is being used to pay for it. The current surplus in the main fund should be used to fund our modest benefit improvement package, while the remainder could be used to offset a portion of the liability.

OTF recognized the risk involved in joint sponsorship for the future, but believed that within an equal partnership it was worth the risk to have an equal say in decisions about the benefit structure, contribution rate and investment policies. However, we simply cannot accept a partnership in which one partner has more power than the other.

The veto power which has been discussed as a solution when no agreement has been reached will simply result in a paralysis of the action. The process when agreement is reached is still less than clear. Will both parties collaboratively write any amendments or will one be charged with the responsibility of interpreting the decisions? We have had some misfortune with that situation in the past.

The government control option proposed in the legislation is totally unacceptable to the teachers of Ontario. Fewer representatives than we currently enjoy in decision-making about our pension plan is unacceptable. Changes to be made by the Lieutenant Governor in Council upon sole request of the government is unacceptable. The government confiscation of any surplus in the future is totally unacceptable. Teachers believe that it is our pension fund and no government has the right to lay claim to it.

We have stated our case to the committee as clearly and as concisely as possible. The teachers of Ontario want to participate as full and equal partners in the management of the teachers' pension plan. We are willing to share the

sponsorship within an equal partnership model. If disputes arise in the future, the intervention of a neutral third party can only expedite the resolution of such disputes.

1730

The teachers of Ontario are depending upon you, the members of the standing committee, to bring forward our recommendations to the Legislature. Many of these amendments are proposed to ensure that the joint management option reflects the equal involvement of OTF in formulating the partnership.

Thank you again for a conscientious and sympathetic hearing and we would be pleased to entertain questions.

Mr Reycraft: Actually, I have several that I would like to put forward. Madam Chair, I will rely on your judgement to indicate when I should yield the floor to someone else.

I want to talk first of all about the proposed partnership model that exists in the bill. I want to really understand your desire to have binding arbitration as the final method of resolving disputes as opposed to the method that has been proposed by the government.

As I understand it, if actuarial assessment on the fund indicated a surplus there are really only three possible ways in dealing with that. You could improve the benefits, you could reduce the contributions or you could do some combination of those first two things.

I have understood the concern of teachers, as they have appeared before us, to be that the government might refuse to agree, might use its veto power over any kind of benefit improvement. As I understand it, that would result then in a reduction in the contribution rate.

I do not understand, given everything that has been said by teachers across the province about the one per cent increase that has been proposed, why you object. Why would you object to a proposal that would result in a reduction in contributions, in the contribution rate, if the government refused to consider benefit improvements?

Ms Polowy: In attempting to negotiate for the teachers of the province the very best retirement benefits that were possible to be achieved, it would be our intention to improve the benefits and the retirement provisions, as opposed to cutting back on a contribution level. That would be one area where I could see that even a mediator, as has been proposed, would not bring the issue to finality. We could simply be left at the end of mediation still disagreeing that the improvement in benefit that we felt was neces-

sary and beneficial to our teachers was not to be forthcoming.

Mrs Wilson: I think the basic case is this, and I understand what Mr Reycraft is saying about teachers feeling one per cent is two much, and they might be happy with the contribution rate decrease in the future.

On the other hand, we might be under very strong pressure as representatives of the teachers to negotiate benefit changes. We have to have some certainty that we will be able to negotiate benefit changes to a successful conclusion, if that is what we are asked to do. Under the present proposal, that could be stopped dead with a veto.

I grant you that there is no confiscation of our money because the rate goes down, but as representatives of the teachers we have to have some equity in trying to achieve what they ask us to achieve. If that is a benefit improvement, then we need a means of resolving a dispute that could arise on that.

Mr Aylsworth: There is no way of ensuring that the real needs of teachers are met. The teachers regard their plan as being very important. They take a very concerned and interested approach to their pensions, they have some very real needs that have not been met in that pension plan and they are interested in seeing those needs addressed.

Mr Reycraft: Do we agree that under the partnership model that is being proposed the government could not unilaterally reduce the benefits? Is there any concern that this could happen?

Mr Aylsworth: The language, as it now stands, would permit that. There is no provision in section 9 that would prohibit the government from acting unilaterally. I take Mr Keyes's guarantee today, but the language as it exists would permit the government to act unilaterally.

Mrs Wilson: We look forward to seeing the new language, but we have not yet.

Mr Jackson: On that point, can we understand that the OTF representatives have been privy to the government amendments which were tabled two hours ago?

Ms Polowy: At the same time as you received them.

Mr Jackson: I just want to establish that you received all these government amendments at the same time we received them.

Ms Polowy: That is right.

Mr Aylsworth: We have not received yours.

Mr Jackson: We will get to that, if you want, but that is straying from the supplementary. My question is—

The Chair: You have got a question?

Mr Jackson: Can I tie that to Mr Keyes' question with respect to whether or not this language changes, based on the question that Mr Aylsworth has raised? Have you changed anything in the amendment?

The Chair: That is stretching back into another presentation. I think we should keep the speaking order.

Mr Reycraft: On a point of order, Madam Chairman: I am interested in OTF's response to Mr Jackson's question, but I do not think this is the appropriate time for us to engage in dialogue between members of the committee. This is time to talk to OTF.

The Chair: I have several people wanting to ask questions and I have a speaking order here. Mr Allen is next on the list.

Mr Allen: Just in respect to that point, if the presenters have not seen the tabled motions, the language around benefits is exactly the same as it is in the original act. The appropriate clause, 9(1)(b), still reads here, "The Lieutenant Governor in Council by order may amend the pension plan as set out in schedule 1 and, without restricting the generality of the foregoing may increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan." At least as far as that section is concerned, there has been no proposed modification that would give any further assurance, as far as I can see.

I really do not personally, nor I think do members of the New Democratic Party, have any further questions to ask of the OTF or of any of the affiliates. It is unfortunate that time constraints have been such that it has not been possible to hear from some other elements, some of the beneficiaries of the plan who come from yesteryear, who have some very plaintive and deep concerns about how they in fact are faring under the plan even as it is presently constructed, and then the failure of the current proposals to move them very much further ahead.

I simply want to make it very clear, if it has not been made clear to date, that while we want to see a partnership full and equal, we also recognize that this full and equal partnership is a partnership in which we are talking about a teachers' pension plan, which is paid for by teachers and which, if it accumulates surpluses, for example—as we have always said with regard to pension

legislation and pensions across this province—must be in the hands of those who are the contributing members and who build up the fund in the first place and for whom it is intended.

Secondarily, we do not accept, therefore, the notion that the balance of power should lie in any respect with the government. In fact, the presumption might almost lie the other way, if one were to follow the logic of what I just said.

We recognize that under certain procedures of government—for example, Kevin Burkett's award under the Hospital Labour Disputes Arbitration Act, I believe it was in 1976—it was made very painfully clear that the government should not have those kinds of powers to unilaterally determine the fate of recipients of income who are dependent on government and that there therefore ought to be arbitration allowed to those employees. I think one can apply the same principle, in a general sense, to this current situation.

1740

As regards subsidiary inequities that have accumulated under the plan, we have certainly long wanted to see ways and means of addressing them, and from our point of view, a jointly operated plan with a dispute settlement mechanism that would move beyond the double veto situation is the one way to get at those and get at them effectively.

Otherwise, from our point of view, there is a stalemate. That stalemate will continue. Governments in the past have not shown a great haste or great eagerness to resolve many of those issues, and we would not anticipate that they would in the future. Therefore, it is our sense that in order to make progress on those subjects, it is critically important that there be a dispute settlement mechanism in place.

I just simply wanted to put all that on the table as the general perspective from which we will be coming at the whole question of amendment to the bill and so, in a sense, to rest our case at that point.

Mr Keyes: First of all, I want to follow up on Mr Reyecraft, and that is with regard to what happens if you get into the situation of discussing benefits. I look much more positively on that future possibility than many of the presenters have done today and it disappoints me that they do not go back and look historically, regardless of the governments that have been in power, because this is an issue that is beyond partisan politics, in my opinion. It is something that has to do with this, in essence: that while there is not a genuine employer-employee relationship, there

is an employee and sponsor of plan relationship, which has been going on, I believe, since 1917.

But let us go back to just as recently as 1975. At that time, indexation was placed upon that plan under the Superannuation Adjustment Benefits Act. But since that time, teachers and government have negotiated a number of times and consistently have improved the benefits to retired teachers.

They took the pre-1982 teachers under the consolidated revenue fund and accepted to pay the indexation portion of their pensions. In 1987, they went back and paid varying amounts to the pre-1982 retirees because of the inadequate pensions they were receiving. Each time a new pension benefit has been negotiated, it has been done with the knowledge of both sides that it was adding to the unfunded liability.

In this legislation, the government is asking for the commitment of 8.9 per cent from both sides and leaving leeway for additional contributions. Why do you think that is there? Everyone is saying there are going to be horrendous surpluses in the future; so be it. That would be great if they did exist. If they do not exist, we both want to continue to make additional contributions to improve benefits.

I suggest that the government has left room to negotiate increased benefits in good faith and has provided a mechanism that will work extremely well, in my opinion, to do that, based on historical precedents of what has happened in the past.

I want to go back to another point, because this is basically the final time we are going to have a chance to hear from OTF. I said to 150 teachers in Napanee last Thursday night, I said to the six representatives in my office on Friday and I have said to officials of OTF that when they came today I hoped I would hear a very clear message. Unfortunately, tonight I did not hear it.

When the Treasurer and officials of the government negotiated with OTF, from the very beginning of this 18-month period of time, his statement was very clear that the acceptance of the unfunded liability was based on a couple of premises, which seem not to have been acknowledged in OTF's final position today.

It was accepted on the basis that both funds would be brought into one, because there really is only one pension plan, but two funds to fund it. They were both to be merged, and the admitted surplus in the basic fund merged with the, admitted by both sides, unfunded liability in the teachers' superannuation fund would become a responsibility of the government, but also on the

condition that the offer was acceptable to the government until 31 December 1989.

To that point in time, any unfunded liability, to the best of people's actuarial capacity, has been worked out at somewhere in the vicinity of \$4 billion but will only be genuinely known when the fund is evaluated on 31 December. He accepted that on the basis, because delaying it further would add considerably to the deficit. It has been estimated and suggested that perhaps the next logical time would have been 1 September. A delay to 1 September adds \$340 million to the unfunded liability.

No additional benefits of major proportions were provided for, because knowing there is an unfunded liability already means that to do more would require a greater contribution from both parties. While Mr Harris has disagreed with the statistics I have been given, I can only work with the statistics I was given. Those statistics said that based on the same assumptions under which the plan was evaluated, which looks after diversified investment in the fund, there would be a need for a 0.6 per cent contribution by each party to fund the \$838 million extra that these benefits would necessitate in the long term.

I had hoped to hear clearly on the governance preference. I did not. My personal preference—and I hope I am not prejudiced by that as we decide this tomorrow and Monday—was that the partnership proposal put forward by the government for governance is superior to both of the other options at this point in time for both the government and the members. Even though it does not provide what the teachers have insisted on, very adamantly this afternoon through some of the affiliates, it would be in their interest to do that, because they themselves have said that they foresee that only on the very rarest of occasions would there be a need for binding arbitration.

There is no return to the status quo. Bill 66, to be passed by 31 December, will make a change, regardless of the option. We are charged as a committee with recommending one of those three options, and that, I am sure, we shall do. There is no return to the status quo. Under government sponsorship, if that is what this committee decides, then the conditions as laid out will apply.

If, on the other hand, we should move and recommend member-run, I do not believe we would be acting in what has been the suggested best interests of the parties at this moment. I can only say that I hope that tomorrow or Monday, since I have not received direction from the 23 or

24 delegations we have heard, divine guidance will be upon us as we make that decision.

The Chair: Mr Reycraft, you had asked for a short question to end off. I did not expect this session to become a statement session, but that is what it has become.

Mr Jackson: I am sure you will give us equal time for statements, Madam Chair.

The Chair: You have not asked for a request. Time is almost up.

Mr Jackson: You can still give me a chance.

The Chair: I suppose I could be lenient, because we have only 10 minutes left. Mr Reycraft, do you want to try a question, or are you going to make a statement as well?

Mr Reycraft: No statements; I have a couple of questions. I will start with this one.

In the 10 years that I contributed to the fund while it was fully indexed, I always assumed that the adjustment fund was based on the principle of equal contributions by teachers and government, that each of us was to contribute one per cent of our salaries into that adjustment fund.

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I heard what you said in your opening statement about the government's responsibility for the actuarial deficit in the fund. Is there not, on the part of OTF, an acceptance and a recognition of that equal funding principle of the adjustment fund? It seems to me you have moved away from that.

Ms Polowy: This sounds very similar to a question you asked me when I made the initial presentation. I think in my statement today, as well as in my statement last week, I suggested to you that the teachers of Ontario were perfectly pleased to hear that the government was going to cover the unfunded liability of the adjustment fund, and that once again, as I said earlier, it had determined to do so because it felt that it was its moral obligation to do so. Where we have said we would share in the sponsorship, share in the risks as well as the rewards, was for future management of the pension plan under a partnership model.

Mr Reycraft: Do you agree that the adjustment fund was founded on the principle of equal contributions from teachers and government?

Mrs Wilson: It was founded on the basis of equal contributions, but it was also founded on a pay-as-you-go basis. It was not intended to be fully funded, and the law did not require indexing to be fully funded.

If you want me to answer your question, if the government offered to pick up the unfunded liability, why would we say no? It was a good offer, so we accepted it.

Mr Reycraft: Was anything exacted in return for that offer?

Mrs Wilson: Mr Keyes seems to hear Mr Nixon's statement with a clarity that I never heard in any statements during our discussions with the government side on what would happen once the two funds were merged. We quite definitely agreed that the best way to manage the two funds in the future was merging. We do not quarrel with that. Where the question arises is in whether or not we would have access to any of the surplus for some improvement in benefits. That is all. We have admitted here publicly today that we would be willing to agree to the use of part of the surplus to help with the unfunded liability.

Mr Jackson: I want to get some clarity from Mr Keyes when he talks about moving off the status quo as of 31 December. He talks about what will change after 31 December.

The Chair: I am not really sure, again, that the deputants want to have discussion between members of the committee.

Mr Jackson: I thought they suffered admirably through the lecture from Mr Keyes. I thought maybe they might tolerate a few moments. How much time are you allotting the balance of what is about to happen here?

The Chair: We are going to complete at six o'clock at the latest. That is 15 minutes.

Mr Jackson: And you have given me how much time?

The Chair: I have not limited your time at all. I am going to ask the deputants if they want to proceed with your questioning the members of the Liberal Party rather than themselves.

Mr Jackson: Do I not have a right to get some clarity on a point raised by any member at this table?

Mr Reycraft: This is a public hearing.

Mr Jackson: I understand. I was not the one trying to curb them, and you would be aware of that.

The Chair: Okay, I think I am going to have to ask you, Ms Polowy, to make the decision whether you would like to have questions addressed to yourself or among members of the committee. It is your time.

Mr Jackson: This is a complete abdication of the chair's responsibility.

The Chair: I am trying to be accommodating.

Mr Jackson: This is cheap and it is inappropriate. If you want to have difficulties with this bill, we have lots of time to have difficulties with this bill.

The Chair: I am trying to keep this an orderly discussion.

Mr Jackson: I am trying to understand why we get all these amendments tabled two and a half hours ago. We get Liberal members asking teachers to respond to what assurances they are given when they have not had time to examine them in these amendments. I was offended by that, to begin with, when you cut me off. I cannot even ask for clarity from the Liberals on certain matters that they raised in the presence of the very people whose pensions we are about to abuse and amuse ourselves with.

The Chair: It does not seem to be objectionable. Mr Keyes, would you please respond to these questions?

Mr Jackson: I object to the whole way you approach these hearings.

Mr Reycraft: How soon do we see the Tory amendments?

Mr Jackson: As is the custom in this province, I would like to see just what it is you people are up to in terms of what you are controlling here anyway. You may not need to see some of my amendments if they have been covered. What we have yet to establish, as a process of public hearings, is whether or not this government has been listening to the deputations that have been presented and its willingness to make amendments. That is what should be in this document. We have yet to see that.

Mr Reycraft: I did not hear an answer to my question.

Mr Jackson: Well, when does clause by clause start?

The Chair: Mr Jackson, do you have questions of Mr Keyes? You said you did.

Mr Jackson: You can pass, Madam Chair.

The Chair: I am sorry that you do not like the way in which I conducted the hearings. I thought we had agreed in subcommittee how the hearings would be conducted. I thought I had done that. I am sorry if that interpretation is not—

Mr Jackson: It was not a consensus, and you know that.

Mr Allen: Madam Chair, on a point of order: The way in which we function in these committees normally is that there is somebody sitting up there beside you who represents the ministry, and

we very often, in the midst of hearings, turn to those personnel and ask them questions. The fact that the two gentlemen in question who are representing the government and the ministry, apparently—because there is nobody sitting up there or sitting over there. It should not make any difference in the process. Mr Jackson has every right to direct his question to whomever he wants under these circumstances. I do not think there is any question about that.

The Chair: Have you no further questions, Mr Jackson?

Mr Jackson: Given the fact that both Mr Keyes and Mr Reycraft were in some other ministry at the time all this was unfolding, Mr Allen is absolutely correct. The fact that the minister on pooling and now on teachers' pensions has got on his horse and got out of town is no comfort to this agenda, nor to the people it adversely affects.

The Chair: We do have people here from the ministry. If you have a specific question, they are here and they have been sitting here all the time. I would call upon them if you would like. Also, there are people here from the Ministry of Labour, as you know, and people here from the Treasury. If you have any specific questions, you have three to five minutes to ask them.

Mr Keyes: The Minister of Education will be here tomorrow for clause-by-clause.

The Chair: I understand that.

Mr Keyes: And Monday.

Mr Jackson: Thank you.

The Chair: I am very sorry that we ended on such a—what should I say?—unco-ordinated note, because I really do want to congratulate the people who have presented and worked together. This has not been easy, and I think there has been a great level of co-operation up to the last couple of minutes. If there has been some misunderstanding in that time, for that I apologize.

I appreciate the co-operative effort. I think we have heard from across the province. I think that has been very healthy. I appreciate the way in which you have attended and the way in which there has been a great deal of professionalism as we have experienced these hearings. Thank you all very much.

Ms Polowy: Thank you, and may I just say that we will be indeed interested as well in the clause by clause.

The Chair: I am sure you will be, and I hope that they will be effective discussions.

Mrs Wilson: We look forward to seeing our minister.

The committee adjourned at 1800.

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Hammond, Penny, Carleton Teachers' Association

From Thunder Bay:

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Dennis, Jackie, Superannuated Teachers of Ontario

From the Ontario Teachers' Federation:

Polowy, Beverley, President
Wilson, Margaret, Secretary-Treasurer
Aylsworth, David, Executive Assistant

Témoins:**Des groupes locaux affiliés à la Fédération des enseignantes et des enseignants de l'Ontario:****De Hamilton-Wentworth:**

Therrien, Raymond, Association des enseignantes et des enseignants franco-ontariens, Hamilton

De Stormont, Dundas et Glengarry:

Hébert, Paulette, Association des enseignantes et des enseignants franco-ontariens, Stormont, Dundas and Glengarry



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Social Development
Teachers' Pension Act, 1989



Second Session, 34th Parliament
Wednesday 13 December 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday 13 December 1989

The committee met at 1906 in room 151.

TEACHERS' PENSION ACT, 1989

(continued)

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act and to make related amendments to the Teaching Profession Act.

The Chair: I would like to call to order a special meeting of the standing committee on social development. At this session we are going to begin to examine Bill 66 clause by clause.

Before we do that, each member of the committee has received a summary of the hearings in this forum today and our researcher, Ms Drummond, would like to know if there are any questions or concerns arising from these, and if there are none, then she is going to be free to leave for the evening.

I think you would have to agree that this has been an outstanding summary in a very short period of time on the points that have been brought to us, actually in the form of clause-by-clause which should be very helpful to us as we proceed through the bill. If I may, I will dismiss Ms Drummond, with a great deal of thanks.

Ms Drummond: Thank you.

The Chair: I heard some discussions as we were gathering for this meeting tonight. I have at this moment got one set of amendments from the government and I have none from either of the two other parties on this committee. The discussion was centring on that very fact and on why there are no amendments from the other two parties. Before we actually start into section 1 of the act, I have to grant permission for that discussion to take place.

The minister would like to make a statement about the amendments that are being presented by the government and then Mr Morin-Strom wants to talk about his reaction to whatever he has not yet heard, or I do not know how much he has heard. Minister, please.

Hon Mr Conway: I am very pleased to join your deliberations tonight. I have been kept abreast of the very good work you have done on a very important piece of legislation to which the government attaches a great deal of priority.

I understand it was just yesterday that you completed the hearing of submissions to the matter at hand and I wanted to join the committee for the clause-by-clause deliberations. There are a number of amendments that are going to be placed by the government and I know by other members of the committee with respect to Bill 66.

I am certainly here to facilitate in any way I can. I am looking forward to moving through the matter over the next few days. I have not joined you for any of the earlier deliberations, but I am very anxious—

The Chair: We have not had any deliberations, Minister, we have had hearings.

Hon Mr Conway: Hearings; a proper correction, Madam Chair.

Mr Morin-Strom: I understand the normal practice that is when we are to start clause-by-clause, all amendments that are available are to be presented to the committee. Normally the first package that is submitted is from the government, so that its position can be laid out and give the opportunity to the opposition parties to provide their amendments, not only to the bill but also to the amendments we anticipate the government moving.

At this point the government has not presented all its amendments to this bill. It is quite clear this bill is deficient, based on the government amendments that have been presented to this point. There is no choice of governance models in the government package. In fact, if we were to speed through this bill this afternoon and pass it with all the government amendments, we would have a bill that the government would have to vote against on third reading, because the bill would have no board to operate the pension plan.

There are other aspects of the plan that are deficient as well, but it is quite clear that there has to be provision for a board in the pension plan and the government has withheld its intent with respect to the composition of that board and on the powers of that board. Until we see those amendments, I do not know how we can prepare our final package of amendments in reaction to it.

Mr Reyecraft: I appreciate the point Mr Morin-Strom is making and I certainly understand why he is reluctant to present the official

opposition's amendments until he has seen the entirety of the government's package.

We have had some opportunity to talk as a caucus since the hearings were completed at almost six o'clock, I guess, yesterday afternoon, but we do not believe that we have had sufficient time to come to a conclusion on the governance issue and we would like to have further opportunity to discuss that before we indicate to the committee what our preference is.

There are, however, a number of other sections of the bill that are totally unrelated to the governance choice and I believe the committee could proceed this evening on those issues, setting aside those that are related to the governance model that is selected. That is the way we would wish to prefer this evening.

Mr Jackson: I share the discomfort with Mr Morin-Strom in terms of proceeding without clarity on the essential point of which track is going to be followed, and as indicated yesterday I am having difficulty preparing to table amendments in light of the manner in which this bill is being presented and has been presented. The limited time has not helped matters either. I am uncomfortable starting any part of the bill until I get a complete sense of where we are going with it. I do not like to deal with bills in and out of context. I find that very difficult. This is a very complex bill and is a matter of major substance to all parties. That is where I am coming from.

Mr Keyes: I would like to respond to say that there has been a lot of study done on this bill by everybody, the members who are here on all sides of the House. In looking at it very carefully I feel that the majority of this act can be debated with the exception of approximately sections 9, 10 and 11. They are the sections that actually deal with the governance model. It is just 24 hours since we completed the hearings. I do not know that anyone here would be ready to make a quick decision in the very first instance tonight that such should be made at this point in time.

As you look at the bill, there are 116 clauses to it. With the exception of sections 9, 10 and 11, the matter of governance comes at section 114. I believe we can deal with the amendments the government has put forth. I believe we can deal with it clause by clause. I would even suggest that I know opposition members have asked in the past for an understanding that while we go over it clause by clause, they reserve the right to return to a particular clause. Have you not asked that before in a committee?

Mr Jackson: No way.

Mr Keyes: I believe it was asked for on one or two of the clauses on pooling, but I am quite happy to deal with them right straight through. I believe that other than sections 9, 10 and 11, everything else is germane to the plan, regardless of governance, and therefore I recommend on that basis.

Mr Morin-Strom: In my view, many more of the clauses are affected as well, and in particular all of schedule 1 is effective. Schedule 1 lays out the pension plan as of the initial starting point. Sections 9, 10 and 11 are operative clauses for changing the plan in the future, but if there is still a possibility that the government is going to move now with a joint plan, for example, that presupposes you are going to reach an agreement with the teachers on what that joint plan is going to be, and that presupposes you have also agreed what the initial pension plan is going to be, which is schedule 1.

A joint plan in my view presupposes that you have made an agreement with the teachers' federations on what schedule 1 is. I do not see how we can address anything in schedule 1 until it has been determined whether you have been able to reach that agreement or not. If you are still negotiating, continue the process of negotiation but let's hold off on dealing with those clauses, which are obviously up in the air and are subject to that negotiation.

Hon Mr Conway: I think I see the basis of an understanding here. I am very anxious to accommodate the committee. The committee has heard all the submissions. The committee undoubtedly wants some time to reflect upon the question of governance. As for the government, as I say, we are anxious to accommodate in any way we can. I do believe there are a variety of sections of this legislation we could proceed with, not at all touching upon the question of governance.

The Chair: Would you give us some examples, I think if some of the people would give examples it might be helpful.

Hon Mr Conway: It seems to me that this is quite an extensive piece of legislation. There are quite a few sections.

The Chair: If you just gave us two or three or four or five, it would be helpful. I think the members who are having difficulties starting anything would have a little bit more idea of where—

Hon Mr Conway: The benefit sections, it seems to me, are sections of this bill that, for

example, we could deal with quite apart from any of the consideration on the governance model.

I want to try to accommodate the committee. The committee has heard the testimony. There is a lot of work to be done and I recognize the time pressures. People ought not to be under any false impression about those pressures. We really do want to move forward, but I think it is quite possible to deal with substantial sections of this legislation. I just mentioned the section on benefits, for example, as one where you could certainly proceed. If I am correct, that is most of schedule 1, without the governance model entering into that.

Mr Morin-Strom: The suggestion from the minister is to proceed with the benefits section. My understanding is that there are, as is well known, recommendations from the teachers' federations for changes to those sections. That implies to me that the discussions are ongoing with respect to trying to reach an agreement on a joint model. I do not see how the government can proceed unilaterally and claim to be continuing to pursue one of the other two models.

If in fact those are finalized at this point, why does the government not present its recommendation that the plan is going to be the government-operated plan? That is really what you are precluding if you want to proceed on schedule 1.

Hon Mr Conway: The only point I make is that I am here. I have heard the committee say that it has just concluded the hearings process and some of the committee would like a little more time to reflect upon what was heard. I am trying to recognize that, as well as suggest that there are substantial sections of this bill that can be dealt with without prejudice to the governance option.

Mr Jackson: My point is that I am citing a basic concern for comprehension in not disjointing this bill. I feel my ability as a legislator will be seriously hampered by approaching it in such a fashion. That is what I am indicating is my area of concern. If the committee wishes to proceed in spite of members feeling uncomfortable with the process, then it has the right to do so.

It is an unusual approach. On the sections you say we can speed through that may be unrelated, I think we will have ample time on Monday night and Tuesday night and probably Wednesday night if we really have to. No, Wednesday night is out of the question. Monday and Tuesday night we will have sufficient time to get through those sections. I am citing my concern about approaching it in a disjointed fashion.

I do not think the sections we might cover will take that great a length of time. The bill fundamentally should not proceed until we set aside some understanding about the points Mr Morin-Strom has raised, and I agree with him completely.

The Chair: I am certainly at the wish of the committee. I would really like to use tonight. I think everyone here set this evening aside and I sure would like to get some work done, but I have to listen to what each of you is saying. If someone wants to begin, I am certainly willing to begin discussion clause by clause of this bill. In spite of what is being said, there does not seem to be any agreement but I get some feeling we are all gathered here for a purpose.

Mr Reyecraft: I listened to both Mr Morin-Strom's and Mr Jackson's arguments. I still do not see why we are unable to proceed with those parts of the bill that are not going to be related to or the outcome of which is not going to be determined by any decision with respect to the governance option that is ultimately put forward.

If there is discomfort with ruling anything out, we could certainly deal with sections and amendments to sections that are unrelated to the governance option and then simply stand those sections down without closing them off. Then if there is a desire to go back to them at the first of the week when we are able to consider the amendments related to the governance option, we can do that at that time.

The Chair: I understand Mr Morin-Strom would like to respond again. I can see it in his face.

Mr Morin-Strom: I cannot understand how we can have a government that is insisting the bill be passed next week and still has not made up its mind what the options are. It is gross injustice to try to put us under a time pressure where the government is going to tell us what the real position is and then ask us to vote on it the same day or the next day. This process has been delayed long enough. I think it is totally inappropriate the government should come in here today and continue to delay the process by not having its package of amendments, which is the normal process.

If we wanted to sabotage the bill, we could let all your package of amendments pass today, let the bill fly through and you have a bill that does not work.

Mr Allen: I think what we are seeing is an extension of a pattern that has been developing in recent months, whereby we are presented with

legislation that appears to be final legislation. Then the government will appear with a mammoth package of amendments to that piece of legislation which tells us that in that piece of legislation the government has not been ready to proceed. It has presented us with premature legislation about which it has not made a final decision or on which its consultation has not been adequate. The results have not been conducive to delivering it for intelligent consideration by this Legislature and it has wasted an awful lot of our time in this Legislature in recent months.

What we have now is a bill in which the government confessedly has not made up its mind about the principal elements of the bill. We are being asked to sit down and consider it, notwithstanding that there must be negotiations going on around not just the governance question but tradeoffs or whatever might be taking place at the negotiation level with respect to secondary aspects of the bill under the benefits section.

It is sort of a half bill, half a bill, half a bill onward kind of routine. I must say that if not totally unprecedented, I cannot remember us ever doing this kind of routine in any clause-by-clause consideration of any bill I have ever been through in the course of seven years. I find it highly irregular personally and I think it is an unfortunate precedent for us to set, if we concede to this kind of approach to legislation in the clause-by-clause stage.

Mr Keyes: I just want to suggest that surely we could start and just try to find exactly, as has been said earlier—start with the very first clause and see where we reach agreement. If members feel uncomfortable with a particular clause, let us stand it down. I believe the number of amendments amounts to 25 amendments, most of them of a technical nature. We filed the list of those amendments with you earlier in the week, and they basically are there. You have had a chance to look at those. I would like to see us get started with the first clause and go through. If you feel uncomfortable about one, we will try to help the comfort level by standing it down.

Mr Jackson: As this goes on I am getting increasingly angry about this whole process. Yesterday Mr Keyes, essentially on behalf of someone in his government, informed the teachers that certain arrangements would not be forthcoming, that significant and substantive financial arrangements would not be forthcoming to the teachers and the pensioned teachers of this province if things were not finalized by year-end. In the process of trying to get some

clarity on that, I was cut off by you, Madam Chair.

The reason I raise that is now Mr Keyes is saying he is quite comfortable to proceed on this basis when his colleague Mr Reycraft has clearly indicated that there is not full consensus as to the position that is going to be taken by the government. He can clearly articulate what amounts to a threat to the teachers of this province on behalf of somebody in cabinet and yet cannot come to this table and clearly articulate the basis on which that threat is founded. Now, I am sorry; I have never seen that trick used in any Legislature in this country. I have never seen that used.

The Chair: Mr Jackson, I do not think you are speaking from experience totally in the whole country. I did give you two opportunities yesterday. I would like you to—

Mr Jackson: This is a rather cheap way of doing business, Madam Chair.

The Chair: Mr Keyes, would you like to clarify now what unfortunately somehow did not get clarified yesterday?

Mr Keyes: Certainly. The comments I made yesterday were based on my knowledge of the negotiations that had taken place over the last 18 months and those that the Treasurer (Mr R. F. Nixon) had been involved with, with representatives, and very clearly stated—I have had an opportunity to read the actual written notes of negotiators at that time and they spell out very clearly the basis on which the unfounded liability would be, in quotes, lifted from the table.

Therefore, what I was reiterating yesterday was saying, “Here are the conditions.” I was correcting what I considered to have been an incorrect statement made by the last delegation as to the fact that the Treasurer or the government had agreed to automatically accept the unfunded liability, and it stopped at that point in the statement. That is not my understanding as to what the statement really said as they negotiated. That is why anything that you consider—I certainly do not consider anything I said a threat whatsoever.

The Chair: Mr Jackson, does that clarify it?

Mr Jackson: That clarifies what Mr Keyes said yesterday. I would like the minister, who is the representative of the government, to explain whether or not all bets are off with respect to the funding of that fund, the liability question, should this bill not be ready in time for year's end.

Hon Mr Conway: The government has made very, very clear what its policy is in respect of

this pension policy. I think we have spent 33 minutes already. Let me just be very clear. I have been around here I think now longer than any one of you. I have been through a lot and I find that it is not very—sorry, I see the member from Erie and the member from Huron looking at me very knowledgeably. They certainly have more years than I do and I recognize their seniority.

We are getting on. I just want to make very plain that what I have tried to do here is to accommodate the committee. I do not want people thinking that the government is undecided. It was the committee that heard—

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Mr Jackson: If you are prepared to help the committee—

Hon Mr Conway: I am quite prepared to help the committee.

Mr Jackson: —then articulate the position of your government with respect to the question that has been raised.

Hon Mr Conway: Absolutely. I just simply wanted to be polite and accommodating and when I heard members say—it is a perfectly valid point, it seems to me.

Mr Jackson: At this point you are being polite to Liberal members who do not have their act together.

Hon Mr Conway: I treat members of the Legislature of all parties with the deference to which they are due. I think I have shown that over the years, and there is a separation between the executive and legislative branch.

Mr Jackson: Ten minutes of unprecedented attention.

The Chair: You did say 33 minutes had been spent.

Hon Mr Conway: I simply pointed out, Madam Chair, that some members here had wanted some additional time to think about what they had heard. The government has simply taken the view that we want and we intend to complete this process by the end of this calendar year, for all of the reasons that have been articulated. I know that there is some division of opinion about the merit of that. We feel very strongly, in response to the public interest, that we have got to do that.

This is an unusual bill and an unusual process in that from the very outset we have contemplated three options on the governance question. That is, I will admit, not a normal process. I think it has been a healthy process in this respect, but it is quite clear, on the basis of what the

government has heard, that is, the executive, that there is not great interest at the present moment in the member-run plan, although I am one who takes great interest in that.

The teacher federations have continued to make very clear the view that a partnership model is only possible if the government accedes to a dispute resolution mechanism that is compulsory binding arbitration.

I appreciate the opportunity tonight to repeat in this Amethyst Room what I have said to a number of people, including the learned member from Sault Ste Marie (Mr Morin-Strom) in the Legislature earlier this week, that the government of Ontario, this government of Ontario, will not accept the principle of compulsory binding arbitration as part of a partnership model, and you should be very clear about that, because—

Mr Jackson: Excuse me for interrupting. Does that mean then that you now have completed your discussions with the Ontario Teachers' Federation?

Hon Mr Conway: I do not consider that a dialogue between a Minister of Education and the teaching profession in a jurisdiction like this is ever terminated. It is ongoing.

Mr Jackson: You indicated your willingness to help us as a committee. The question has been raised by Mr Morin-Strom as to whether or not the negotiations are still ongoing with respect to the sensitive point you just made. If they are not and you are aware of that, then we should understand what is the option that we are to be tracking here.

Hon Mr Conway: I think you should know that there certainly, from my point of view—and there have been good discussions. We have made a number of—

Mr Jackson: You had a sit-in, which described the nature of your discussions to date. I am asking where we are going now.

The Chair: Mr Jackson, I am sorry, the minister has the floor.

Hon Mr Conway: In a healthy and vibrant democracy, the right of assembly is a very important principle that I acknowledge and I am pleased to see the teachers of Ontario exercising such a democratic interest in something that very much affects them.

I am delighted to meet with them, I have met with them on a number of occasions recently, but I just want to report to you as a committee that we are not at one on what appears to be a very

fundamental point in respect of the partnership model, and I do not want to mislead anyone.

There have been discussions. I have offered a bill that provides a mechanism that, if we opt in first instance for governance model A, it probably will be the case that over time we will move to something else. But at this point in time I have got to tell you that the partnership model, as imagined by the teaching profession, is not on because the government will not accept what appears to be for the teaching profession a *sine qua non*, a *quid pro quo*, and that is a compulsory binding arbitration mechanism of dispute resolution. It is simply not on. I view that as simply not acceptable, and certainly the government takes that view as well.

That is not to say that one could not imagine a variety of other ways of resolving disputes, but I have to be candid. In the discussions that I have had and that I gather the committee has heard in so far as some of the presenters are concerned, OTF and others in the profession have clearly argued that there is no partnership, from their point of view, if there is not compulsory binding arbitration as a dispute resolution mechanism.

So it is quite clear—it is clear to me at least, at this point in time, given the exigencies of the schedule that we have before us—that of the three options for governance, the governance option in first instance will have to be or is very likely to be the government-sponsored option. I hope that that is clear from the government's point of view.

This committee has just concluded several hours of hearing submissions, and that some in the committee wanted some time to think about what they had heard is not, it seems to me, an unreasonable position at all. But if it is helpful, I am quite prepared to proceed on the basis that I have just indicated. I am really in the committee's hands and I want to be accommodating.

Mr Jackson: Is that a help to you, Doug?

Mr Elliot: Madam Chair, I am going to be seeking a ruling from you. Having chaired a committee at this place, I think it was decided by the subcommittee of this committee that we were here to do clause-by-clause this evening. With due respect to the people who have talked so far, I think we have been wasting time. I think we should get on with the clause-by-clause. I checked with our clerk and there is absolutely nothing wrong with starting a bill, and if the committee desires to stand down clauses as we go, we may do that. I submit we should get at it or we should do something else that is more productive.

The Chair: Mr Allen would like to speak, and Mr Morin-Strom, and then I think we should make a decision.

Mr Allen: With all due respect to the patronizing comments about our having wasted the committee's time, I could say that the rest of us could also indulge in a long dissertation about democratic process and continual consultation, but it is quite clear that governments have to bite the bullet and at certain points in negotiations they have to make up their mind which way they are going to go with a particular piece of legislation. What I just heard the minister say for the first time in this place is that it has rejected the joint partnership model and that it has opted for the government-run option.

Hon Mr Conway: That is not what I said, Dr Allen.

Mr Allen: If that is what the minister has said and that is a clear decision and we are proceeding this evening on that basis, then we know where we stand as an opposition with respect to how the government is handling the bill at this point in time. I understand that does not preclude some movement down the road. I understand that. All of us do. But I gather we have heard a clear statement that the minister has opted for a specific position vis-à-vis this bill and that is the basis upon which we are approaching the clause-by-clause tonight. Is that correct?

Hon Mr Conway: I just want to clarify one point. The government, of course, remains very, very interested in the partnership model. We said at the outset that that would be the preferred option, but I think Dr Allen is correct and I want to just reinforce the point.

At this moment, after 15, 16, 17 months of discussion, and there has been a lot of discussion, there is apparently a fundamental difference of opinion between the government and the teaching profession about one of the key ingredients to that partnership model. That question is around dispute resolution.

The teachers, as I understand their position, have said if there is not binding arbitration, the partnership is not on. The government is saying that while we remain very interested in the partnership option, we will not accept binding arbitration of that kind as a means of dispute resolution.

Mr Morin-Strom: I would indicate that I came in here with a package of amendments which are our response to the government package of amendments from yesterday, and I am prepared to proceed with those. However, I

would find it grossly unfair if the government came in with major changes next week that then changed the nature of the bill.

I came in here saying I have assessed the bill. I have my package of amendments to react to that bill. I pointed out that it appears to me that there is no board to operate the pension plan, so it seems to me that perhaps the minister was not at fault, but the five members over there who devised the government package of amendments had some faulty logic in their process of putting together a package and there is a serious deficiency in the bill.

My presumption is that if we move through at this point in fact there is something going to be coming in schedule 1 which will show how the board is going to be composed and operated. That is what the motions indicate, but they do not appear anywhere in amendments to schedule 1.

The Chair: The minister would like to—

Mr Morin-Strom: No, I am not quite completed.

The Chair: Oh, you are not? Sorry.

Mr Morin-Strom: I am prepared to proceed clause-by-clause, but I feel that we have to proceed right through on the clauses that are there.

I want to have a clear understanding with respect to how clauses can be stood down. My preference would be to have no clauses stood down; we continue through the succession of the bill. I would like to know clearly, what are the rules for standing down a clause? Does it require one member to request standing down or does it require unanimity to stand down a clause?

The Chair: We can postpone, and I think that is really what we are talking about when we are talking about standing down.

Mr Morin-Strom: My question is, is it unanimity or is it one member?

The Chair: Majority of the committee.

Hon Mr Conway: I think I can perhaps help my friend, and I appreciate the situation in which the committee finds itself. I can very shortly table the additional amendments—I will just have to check with staff—assuming that they are at hand.

I came here tonight anxious to accommodate the committee. I realize the concern of honourable members. There are some additional amendments that obviously have to come when you make a choice about the governance option. That is a given. You are quite right in pointing out that the amendments that are currently circulated do not address that issue.

But let there be no confusion. From the government's point of view, and I do not want to be too repetitive on this point, at this vantage point, and if you are asking me to make that determination now to help you, I will do it for you, because, quite frankly, I do not want there to be any confusion.

It will be the government-sponsored option in light of the circumstance that I indicated, and that will produce a set of additional amendments that will certainly, I think, clarify for my honourable friend from Sault Ste Marie the point he had, and I am anxious in other ways to help this process along. The Christmas season is here, we have all worked long and hard and we are reaching the end of the session.

The Chair: Mr Morin-Strom, are you saying now with this answer and the rest that you have heard that you are willing to—

Mr Morin-Strom: If we could adjourn for 10 or 15 minutes so that the minister can present his amendments, I will be prepared to proceed at that point.

The Chair: Would Mr Jackson be prepared to proceed at that point as well?

Mr Jackson: I doubt it seriously, but I will look at these amendments.

Hon Mr Conway: I am just trying to be helpful.

Mr Jackson: You have been a great help. It took us 40 minutes to get them out of you.

Hon Mr Conway: That was not my fault.

The Chair: I would like to come back here at five to eight.

The committee recessed at 1943.

1958

The Chair: I think our 10-minute recess is now concluded. If we could come to the table and begin clause-by-clause of Bill 66, it would be very helpful.

I understand that in the 10-minute recess the minister has been able to get the other amendments that have been requested printed and they are now ready for distribution, and I would ask that that be done now.

Hon Mr Conway: I would like to simply indicate that, consistent with the indication I gave earlier, the amendments that would be required to give effect to the government-sponsored option are contained in these two sets, the first dealing with the pension board, to which Mr Morin-Strom made reference under that option, and of course the question of the financial

aspects of surplus and inefficiency. So those are the copies.

The Chair: Mr Morin-Strom, you mentioned something about amendments you had to table?

Mr Morin-Strom: Yes. I have a package of amendments to table in response to the government amendments yesterday and I will do that now.

Quite clearly, we will want to stand down any new sections that have been addressed by the government now so that we have the opportunity to assess them and on Monday, I would assume, any new government amendments and sections that may be affected by them—we will need that time to address them.

But I have a package of amendments which addresses most of the sections, at least key issues of the bill. Based on the time constraints we had from yesterday, we were not able to address all the sections, particularly of schedule 1 and schedule 2, and there are many aspects the teachers have brought forward that we are sympathetic to and we will be looking at them as well and may have further amendments related to the teachers' suggestions at that time.

The Chair: So your amendments are now being distributed, correct?

Mr Morin-Strom: Our amendments are being distributed. They certainly address the first part of the bill, the main sections of the bill.

Hon Mr Conway: Just for the benefit of the committee, the committee should know that with the circulation of these amendments setting out the government-sponsored option, that, together with the other amendments that have been previously circulated, represents the vast majority of any amendments that we would intend to propose, save and except anything of a technical nature that might be identified in the course of the clause-by-clause, and quite frankly, any areas where we might find ourselves in some agreement, depending on how things proceed.

The Chair: I am reminded by the clerk, and I think we did use this in the previous bills, Bill 64 and Bill 65, the term is "postpone" rather than "stand down" under the new rules. I think we should likely be consistent with the new rules in our terminology.

We now have three new sets of amendments, as I understand it, to deal with.

Sorry, I cannot proceed at the moment because I do not have a complete set of amendments. Are some of them being copied? Are the PC motions being copied? Okay.

I suppose we could begin, if there are no changes before subsection 5(1). Mr Jackson, could you tell us where your first amendment comes?

Mr Jackson: I think you are quite safe proceeding with the government's. I think the government's is up first.

The Chair: Our first amendment that I have before me, which is a government amendment, is subsection 5(1). I do not want to deal with that until I get the other sections moved and carried, but I want to be sure that that is the first amendment I have before me.

Mr Jackson: No, I have one which Todd is photocopying in subsection 2(1).

The Chair: Then I guess the only safe question I may ask now is, may I consider section 1 carried?

Section 1 agreed to.

The Chair: The definitions are now carried; we are all speaking the same language.

Mr Reyecraft: With four words—a limited vocabulary.

The Chair: Some of those words are rather significant. I do not want to underestimate what we have just done.

I am sorry, we will have to wait until we have the amendment from the Progressive Conservatives on section 2. If the rest of you just want to collate the paper that has been presented, that may be helpful.

With all of these delays, I have been asked by both the translators and the television people if we are willing to continue to meet longer than nine o'clock. I think because these people are employees and at our service, we should try to make that decision now, whether we want to go until 9:30 or quarter to 10 or whatever.

Mr Keyes: Until 10.

The Chair: I am certainly again at your wish. The House is meeting, so we are not the only ones working tonight, which maybe makes us feel a little better. What is the wish of the committee? I have heard three people say 10. I have not heard anybody else. What are we agreeing to, gentlemen?

Interjection: Go till the House adjourns?

Mr Morin-Strom: The terms were to 9:30, is that what was posted?

The Chair: I have heard different. I think the actual notice said nine o'clock, some people came here thinking they were staying here until 9:30, and now I am having some people agreeing

to stay until 10. Could we give the staff here direction?

Mr Reyecraft: We are certainly willing to stay until 10.

The Chair: We have one group saying we will stay until 10.

Mr Morin-Strom: Why not cut at 9:30?

Mr Jackson: Why do we not stay until 9:30?

The Chair: The decision is 9:30 then? Okay, that is what we will do.

I will be back shortly.

The committee recessed at 2009.

2012

The Chair: I am sorry, I just had to excuse myself for a moment. If we may continue then, I know there is an amendment to subsection 2(1) to be presented by Mr Jackson.

Mr Jackson moves that subsection 2(1) be amended to read:

"A pension plan to be known as the Ontario teachers' pension plan continues the pension plan set out in the Teachers' Superannuation Act, 1983, and the regulations thereunder and the plan provided under the Superannuation Adjustment Benefits Act as a single unified plan."

Mr Jackson: I think it is understood that the intention is that the duality of the two plans be recognized and I will leave it at that.

Mr Keyes: I would have to speak against this, because after all, the basis on which I made comments yesterday and the basis, again, on which the government negotiated with OTF was that there would be one plan, one fund. This gives an indication, unless I am misreading it, that it is to be set out as two funds, and therefore I cannot support it.

The Chair: Do you want to speak to it further, Mr Jackson?

Mr Jackson: No. I think in light of the government's changes, there is a certain element of trust in terms of how this would be administered by a government-run plan. I think some of the protections and assertions contained in the two funds should be carried forward.

The Chair: Okay, then. May I have a vote on this amendment? All those for? Against?

Motion negatived.

Section 2 agreed to.

The Chair: The next amendment I have is to section 5. So may I consider sections 3 and 4 carried?

Sections 3 and 4 agreed to.

Section 5:

The Chair: The next amendment I have been presented with is a government motion on subsection 5(1).

Mr Morin-Strom: I would like to move that.

The Chair: Would you like to speak to it, Mr Morin-Strom?

Mr Morin-Strom: Very briefly. The amendment seeks to make clear that this is a statutory appropriation and not moneys that are payable from the voted estimates. The language of the amendment makes that a lot clearer.

Mr Keyes: On a minor point of order, Madam Chair: Do we have to read all of the amendments into the record or not?

The Chair: That is what we have been used to doing, and I think that certainly with this we should.

Mr Keyes: We have been doing that in the committee up until now, Minister. They say otherwise they do not have it officially in Hansard and therefore they want them read in.

Hon Mr Conway: In that event, I appreciate that direction.

The Chair: Yes, I think it is important that we do that.

Mr Conway moves that subsection 5(1) of the bill be struck out and the following substituted therefor:

"(1) The Treasurer shall pay from the consolidated revenue fund an amount equal to contributions under the pension plan payable by the minister."

Any further comments, questions or discussion on that matter? May I consider then that this amendment to subsection 5(1) is carried?

Motion agreed to.

The Chair: All right. I see that I have an amendment to subsection 5(2a). I presume that has to be an addition and that is by Mr Jackson.

Mr Morin-Strom: I have an amendment to subsections 5(2a) and (2b).

The Chair: I happen to have Mr Jackson's before me in this pile. Did you want to introduce yours first? I guess we will do that, Mr Morin-Strom. There do not seem to be very strong objections from Mr Jackson. So we have subsection 5(2a) and (2b).

Mr Morin-Strom moves that section 5 of the bill be amended by adding thereto the following subsection:

(2a) "An actuarial gain disclosed by a valuation of the pension plan after the 1st day of January, 1990 may not be applied to reduce the

payment required under this act by the Treasurer or a contribution under the plan payable by the minister."

(2b) "A surplus disclosed by a valuation of the pension plan after the 1st day of January, 1990 may not be paid, in whole or in part, out of the pension fund."

Comments, questions or discussion on this proposed amendment? Mr Keyes? Do you want to speak to it, Mr Morin-Strom?

Mr Morin-Strom: This establishes very clearly who has the ownership of surpluses in the pension fund. Certainly our position is that the fund belongs to the employees. It is their wages and contributions by the government on their behalf into the fund to provide for their security in their later years.

We have to establish absolutely clearly that the surpluses belong to the fund and must stay in the fund, and there should clearly be no access to those funds by the Treasurer or the minister, either with respect to actuarial gains that may be disclosed in future valuations, or being used by the Treasurer or the minister to reduce a contribution, or future surpluses being used to pay back out of the fund to the government any sums for any purpose whatsoever.

Mr Keyes: I believe that, as a result of the minister's comment earlier, we are proceeding with these amendments today and with the study of the clause-by-clause on the basis that it is government sponsorship. Therefore, on the basis that it is government sponsorship, should surpluses or deficits occur, they would become the property of the government. That is the basis, as I understand it, on which we are proceeding at the moment, and therefore I cannot support the motion as put forward.

Mr Jackson: This committee heard strong and cogent arguments, court cases in fact, dealing with Dominion Stores and Ontario Hydro, and it is abundantly clear that that is the direction that Ontario should be going in.

I, for one, cannot buy Mr Keyes's argument. I firmly believe that we have an obligation to get the highest rate of return for the participants in the plan. I think we have a responsibility to ensure that they are protected and that those funds cannot be removed for any reason.

2020

I think we should really be suffering upon this government the same standard that it expects of everybody else in society in the treatment of pensions and I certainly would not wish to be

hypocritical in that regard on this vote. I support the motion fully.

The Chair: Mr Morin-Strom, do you want to respond now or at the end? I have a couple of other speakers.

Mr Morin-Strom: Take the others.

The Chair: Okay. Mr Reycraft is next and then Mr Allen.

Mr Reycraft: I just wanted to inquire what Mr Morin-Strom's position would be should there be an actuarial deficit in the fund under the model that is being proposed.

Mr Morin-Strom: I think that will be dealt with in other sections of the bill later on. We are not up to that point yet.

Mr Jackson: You might have your mind changed or at least your marching orders removed.

Mr Allen: I would just like to add to my colleague's first remarks and to respond briefly to the government observation from Mr Keyes.

It is my impression that, although company plans may be run by companies for their employees, none the less the courts have been making some pretty significant decisions about the fact that the plans are intended for the employees and, therefore, the consequences of plan investments, surpluses and so on, ought to be directed entirely to their benefit. This is what they were supposed to do. So I find it very strange for the government to be arguing that, because it controls the plan, because it is the governing factor in the plan, this kind of amendment is inappropriate.

Mr Keyes: I would just add a point of clarification to it. There are two things: First of all, the government amendment says they will make payments as required under schedule 2, but the government-sponsored plan is still subject to the regulations of the Pension Benefits Act and, therefore, that in itself is the controlling factor which will give the participants in the fund some security as to what can be done with any potential surplus.

One other very small point that I think has been raised in most of our presentations in the last two days about the court cases, in two of the instances anyway, the two in Ontario, both of those hung very, very much on the wording in the plan. It was a straight interpretation of the words in the plan which I believe was one of the major factors that caused the decision to be reached that was rendered.

Mr Morin-Strom: I appreciate getting the clear position from Mr Keyes with respect to the

government on this issue. This is clearly a critical issue of belief with respect to ownership of funds in a pension plan. This is a test of the government's position. The principle applies to other pension funds in all sectors of our society. Our position is quite clearly that the funds belong to the employees, regardless of who is governing the plan.

Mr Keyes tries to make the point that we are starting with a government-governed plan, but this is in a section of the bill that cannot be changed; this is not in the plan. This a section of the bill which is going to apply whether it is government-operated, whether it is a jointly operated plan or whether it is a member-managed plan. In all three cases, we feel that it should be established, we agree that it should be established in this section that surpluses, if they occur, belong to the plan. Those funds are there for the benefits of the employees, and that should be made clear in this section of the bill, which cannot be touched by cabinet reference.

Mr Reyecraft: I have looked through the package of New Democratic Party amendments and I cannot find anything here that addresses an actuarial deficit in the fund. Am I missing something? Mr Morin-Strom indicated I would get that information later.

Mr Morin-Strom: As this plan is starting, I understand it is a defined benefit plan. So there are rules under the Pension Benefits Act for dealing with deficits in the plan, and we would expect that the deficits would be handled in accordance with the rules of the Pensions Benefit Act. We are in concordance with the principles in place in the Pension Benefits Act in the treatment of actuarial deficits.

If in fact the negotiation of a member-run plan is determined at some point, that may be addressed within a member-run plan, but at this point I do not believe we have that. Therefore, if you are going to have a government-run plan, the government is going to take responsibility for the deficits.

Hon Mr Conway: I would just have to make a point. I have listened very carefully to the discussion and I think what Dr Morin-Strom is saying is that, under this amendment, the members would get to enjoy the surplus and the government would get to enjoy any deficit. I think that is what he is saying and that, of course, is simply not on.

Mr Morin-Strom: With this government that is quite clear. With another government, it may be a different story. In fact, the courts have been

ruling differently than this government has been trying to—

Hon Mr Conway: I cannot imagine there are steelworkers in Sault Ste Marie who would differ with my assessment of what would be right and fair in this case.

I think really and truly—and I see people smiling, saying that I may be wrong—but I would just ask you to reflect upon the point that Dr Morin-Strom has asked us to think about, the situation where the members would get to enjoy the surplus and the government would get to accept a deficit. That is the stuff of the Reverend Bill Aberhart.

Mr Morin-Strom: I think it is little bit twisted by the minister. The minister knows that, if there is a deficit in the plan, the management of the plan would necessitate corrective action, and that may well imply increasing of rates of payments by both the members and the government.

The Chair: May I ask for a vote on the addition of this amendment, subsections 5(2a) and (2b). Those who are for the addition?

Mr Morin-Strom: Could I have a recorded vote, please?

The Chair: Yes, you may. Are we ready to have the recorded vote? Those who are for this addition?

The committee divided on Mr Morin-Strom's motion, which was negatived on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Neumann, Reyecraft.

Ayes 3; nays 6.

Mr Morin-Strom: Mr Conway gets a vote?

The Chair: He is subbing on this committee. We have five members from the Liberal Party and Mr Conway is the sixth.

Mr Jackson, I have an amendment—

Mr Jackson: There is no need to table my amendment. It was substantively covered by Mr Morin-Strom's.

The Chair: So you are withdrawing that? And the same for subsection 5(3)?

Mr Jackson: Yes. It is apparent the government would be unwilling to support that.

The Chair: Okay. Then may I consider section 5 carried?

Section 5, as amended, agreed to.

The Chair: At the moment, absolutely no amendments have been presented to section 6, so may I consider section 6 carried?

Section 6 agreed to.

2030

Section 7:

The Chair: We are now going to move to section 7, where I have been presented with a couple of amendments. The government amendment has some changes to the section and the amendment for the Progressive Conservatives is striking the section out totally. So I think I would like to go with the government motion first.

Mr Keyes moves that section 7 of the bill be amended by striking out "prescribed by regulation" in the first and second lines and inserting in lieu thereof "set out in the pension plan".

Would you like to speak to it, Mr Keyes?

Mr Keyes: Originally it was thought that perhaps the governance's plan would be done in regulations. Concern has been expressed about that, so we felt it would be much better to put it right into the schedule. Therefore, that is what this amendment does: it puts it right into the schedule, which is the plan itself. It is schedule 1 we would be looking at, putting it in there.

The Chair: Any comments or questions on this particular amendment? Are we ready to take the vote on this amendment? What is the will of the committee? There seems to be—

Mr Jackson: I am in shock. I am so used to having 12 or 13 bills where we cannot get them to take it out of the regulations and put it into the bill. I am just surprised.

Mr Keyes: It is a very forward motion.

The Chair: Your shock, no doubt, must be very old shock, because you have had these amendments for some time.

Mr Jackson: I know.

The Chair: What is the wish of the committee? Are we ready to vote on this?

There is absolutely no discussion. May I consider, then, this section 7 amendment carried.

Motion agreed to.

The Chair: Mr Jackson moves that the whole of section 7 be struck. It is out of order to ask for a whole section of a bill to be struck; you may vote against it, but you may not ask for it to be totally struck.

Mr Jackson: Given the fact that I have not even tabled it, I would not even waste your time.

The Chair: You had it before me. You had tabled it, but you had not moved it.

Mr Morin-Strom: Now that the change has been made, the section would seem to have no effect. I would just ask if we could get a clarification from the government as to what the purpose of the section now is.

The Chair: Are you talking about the amendment we have just made to section 7?

Mr Morin-Strom: No. We have passed the amendment, right? Now I am asking, in its amended form, what does it achieve? What does it do? It does not seem to say anything. I would like to ask, does it have some meaning?

Ms Skelton: It is needed there primarily because, if you ever went to a member-run plan, you would have an act left and you would eventually repeal the schedule to become a plan document under the PBA, if the members were running the thing. So this provides that whatever is the pension plan document is the pension plan. It is only needed if you are ever left with the remnant of the act in legislation.

Mr Morin-Strom: I do not understand that. This is talking about the composition of the board. You are saying this sets in place the composition of the board as of that plan?

Ms Skelton: As it would be set out in the plan.

Mr Morin-Strom: And fixes that in place, then, as of that time?

Ms Skelton: Yes. The pension plan, as set out now, is set out in the schedule. So the composition of the board would be as set out in the schedule here. In a member-run option, for instance, the composition of the board would be set out in the plan document that was registered under the PBA. So it is allowing for different circumstances of how you describe and where you describe. That is all it achieves.

Mr Morin-Strom: If it was not there, what would happen? It seems to me that you have got over the composition of the board there and presumably, under a member-run plan, it includes the terms of the composition of the board. I do not see why this clause is necessary.

Ms Skelton: It simply gives some clarity of where to look when you have a small act that—

Mr Morin-Strom: Like a referral.

Ms Skelton: —has a schedule 1 attached.

Mr Morin-Strom: Perhaps there is some other advice coming.

The Chair: Any further questions about this particular amendment? Does that satisfy you, Dr Morin-Strom?

Ms Skelton: One final note is just that the composition of the board, which is a creature of a statute, has to be spelled out somewhere.

Mr Morin-Strom: So it is necessary from a legal standpoint.

Section 7, as amended, agreed to.

Section 8:

The Chair: I have an amendment from the government on section 8.

Mr Keyes moves that section 8 of the bill be amended by striking out "prescribed by regulation" in the second line and inserting in lieu thereof "set out in the pension plan."

Mr Keyes: The very same rationale applies for section 8 as has just been given for section 7.

Mr Morin-Strom: I think it is an improvement. It is better than having the cabinet have the arbitrary ability to be able to make those kinds of changes.

The Chair: Thank you for that positive comment. We hope that is going to be recorded and italicized in Hansard, because that is a very positive comment, I think, the most positive one we have had tonight.

Motion agreed to.

Section 8, as amended, agreed to.

Section 9:

The Chair: Now we have several government amendments to section 9 and we have an NDP motion to section 9. Dr Morin-Strom, would you like to have the government motion presented first?

Mr Keyes: Will you take the government one first or not?

The Chair: Yes, I will take the government one first. I just wondered if there was any similarity at all.

Mr Keyes: Oh, yes.

The Chair: Mr Keyes moves that subsection 9(1) of the act be struck out and the following substituted therefor:

"9(1) The Lieutenant Governor in Council by order may amend the pension plan as set out in schedule 1 and, without restricting the generality of the foregoing, may,

"(a) determine the methods or assumptions to be used to calculate any pension or other benefit, refund or interest rate provided under the plan;

"(b) increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan;

"(c) vary or provide a method for determining a variation in the rate of contributions required to be paid under the plan;

"(d) extend, modify or restrict the conditions upon which persons may become members of the plan;

"(e) regulate the administration of the plan;

"(f) determine the composition of the board and its powers and duties;

"(g) rescind the plan and replace it with another pension plan;

"(h) exercise with respect to any plan established under clause (g) the powers conferred by this subsection."

Mr Keyes: The only change here is to add a new clause (f) which empowers the Lieutenant Governor in Council to amend the plan as it would affect the composition, powers and the duties of the board, the same as we have done in sections 7 and 8.

Mr Morin-Strom: I have to object most strenuously to this amendment. We had heard from the government, I think, some indications during the hearings process that it was going to withdraw this most objectionable clause. This is the clause which gives the cabinet the arbitrary power to go in and make virtually unlimited changes to the operation of the pension plan. Surely we should not be allowing the cabinet to be able to unilaterally go in and change the pension plan on its own.

Historically, the pension plans of the teachers have been set in statute, and if changes are going to be made by government, it should happen through the legislative process. We heard delegation after delegation come before us asking that this government respect that legislative process and that changes would not be able to be made unilaterally by the cabinet, that if changes were going to be made, it should have to come back to the Legislature.

In our view, this clause, which is the operative one for the government to be able to change, as it is going to term it, the government-run plan, in fact means it can set up any kind of pension plan and make any kind of arbitrary changes to it it wants to in the future simply by a cabinet order. In our view, it affects as well the other types of plans and other types of possibilities.

Hon Mr Conway: I would just make a make a couple of comments in response to that, if I might. I well remember some of the discussions that have surrounded this issue. I would simply make two points. First, I would not want Dr Morin-Strom to leave anybody with the impression that cabinet or the government can behave in any fashion imaginable. The government must abide by the Pension Benefits Act, and we intend to have policy that conforms to that legislation.

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The idea that everything should be tied into the legislative process is one that I think both teachers and the government in the past have expressed some concern about, simply because it tends to be very difficult, on occasion, to get legislative time. I can certainly indicate that the principle that no change could take place without an act of the Legislature might very well hang up improvements, changes—I guess “amendments” is the proper word—that might very well be sought after.

Mr Morin-Strom: Perhaps the government then would consider my amendment as an amendment to the amendment. I do not know how the chairman would view it. Mine is virtually the same wording as the government’s. I think the only difference from the government’s wording is that we have added, “The Lieutenant Governor in Council and the Ontario Teachers’ Federation may enter into agreements that amend the pension plan.”

Our position is quite clear. The pension plan belongs to the employees, the funds belong to the employees, and to make changes without having the consent of the employees would be inappropriate. We are legislating a starting formula. But even in the government-managed plan, in our view, a change to how that fund is going to be managed and operated should only take place if the representatives of those employees have been part of that decision-making process. If the cabinet has an agreement with the teachers’ federation to make a change, we say, “Fine, make the change,” but if you do not, go back to the Legislature to get the change.

Hon Mr Conway: I would just make a comment—and it is going to be repeated through this passage—that while I respect very much the comments of my friend the member for Sault Ste Marie, it has to be said that we cannot accept his motion because it operates on a different assumption.

This is the government-sponsored model and it does not accept the partnership notion of the honourable member’s amendment. You are right: under this plan, the government accepts all of the risks and any of the rewards. There are a lot of things that flow from that. So I will admit that there is a very different point of view here and we are proceeding down a path, assuming a government-sponsored plan, that does not provide for the kind of negotiating right that is intended by the honourable member’s amendment.

That kind of negotiating opportunity would perhaps, I think it is fair to say, be more possible and more likely under a partnership model, but this is not the partnership model. This is a situation where the government is accepting all of the risks and whatever rewards there are. I just want to be clear about that.

The Chair: Do you want to ask some questions to the minister on this point?

Mr Jackson: Yes.

The Chair: Right now we have, as I understand it, an amendment to the amendment.

Mr Morin-Strom: Should I move the amendment to the amendment or do you want to deal with two separate amendments?

Mr Jackson: No. I would recommend that we deal with the amendment to the amendment and deal with it in that order.

The Chair: That is what I was going to do.

Mr Jackson: That is what I understand is the proper procedure.

The Chair: That is what I thought was happening.

Mr Jackson: Then we can move to that and then discuss it.

The Chair: Dr Allen, did you want to speak now at this point? I have to get Dr Morin-Strom to move his amendment to the amendment. Could you do that for me?

Mr Morin-Strom: Do you want me to read my whole thing?

Mr Allen: No, I do not think that is necessary.

Mr Jackson: This amendment does not exist.

Mr Allen: What we need is to substitute—

The Chair: Just a second. We have an amendment on the floor. You have suggested an amendment to the amendment. Are you going to comment on that, Dr Allen?

Mr Allen: I can move the amendment, if you wish.

Mr Morin-Strom: Can you tell us how to move an amendment to the amendment?

Mr Allen: I know how.

The Chair: You are working on the wording very quickly. I want to do this correctly because it is very important. It is a key clause, we all know that.

Dr Allen, did you want to fill the time by giving us some comments on this? We will make them retroactive if they are applicable.

Mr Allen: Of course, it is standard procedure in the committee to move in that fashion and to

move to all of the possible amendments by amendments to amendments, and amendments to amendments to amendments, if necessary, in order to get the proper sequence of flow through the committee.

Mr Jackson: It is quite common in the three parties.

The Chair: Yes. I have no difficulty. I just want to make sure we get the right wording.

Mr Allen: We will get the right wording out of that process from the clerk. It is a very straightforward matter in this case of deleting all the words prior to "amend" in the government motion and to substitute the first language of our subsection 9(1) in the face of those words, which would then read, "The Lieutenant Governor in Council and the Ontario Teachers' Federation may enter into agreements that," and then continue with the wording.

The proposition is very straightforward. Either the minister is missing the point here or in fact this government-run plan is going to be a great retrogression in pension legislation, in particular a very regressive move with respect to the Ontario teachers' superannuation legislation, because it will establish pretty clearly that there is a very clear and arbitrary posture being taken by the government that the Lieutenant Governor in Council may proceed with any and all amendments without negotiation, without consultation. Some of the implications of clauses (a) through (h) are incredibly far-reaching with respect to touching every corner of the plan.

I do not understand. Since the minister has agreed that in the past these changes have been made only as a result of the most careful consultation and agreement with the teachers' federation, I see no problem and no compromise of the government's intention to run the plan, for it at this point in the legislation to include language that makes certain that the Ontario Teachers' Federation has entered into an agreement with the government in order that certain amendments be put to the plan. I do not see that this compromises the past practice. If it does, in some odd way, then we are in for a rather strange and new regime with respect to the teachers' pension legislation of Ontario.

The Chair: Minister, before you begin, I think I would like to get the amendment to the amendment on the floor, because Dr Allen has just spoken to something we did not really formally have on the floor and I do not want any further statements made until we get it on the floor.

Mr Morin-Strom moves that the motion on the floor be amended by striking out "by order may amend" and inserting in lieu thereof "and the Ontario Teachers' Federation may enter into agreements that amend".

We will consider that our first speaker on that was Dr Allen and we are going to have the minister now. I think he wants to speak.

Hon Mr Conway: It is certainly a change, there is no question about it. It is also true that there is probably a better way, and the better way is some kind of partnership, but as long as we do not have that partnership, this is the alternative under the government-sponsored plan.

I think there has also been some real interest on the part of plan members for a more efficient amendment process. I do not think that is major news to a lot of people, but I admit that it is a change, and I am one who believes that there is probably a better way. We just have not found it in so far as the partnership option is concerned. With partnership not being an option, at this point we are left with the government-sponsored option and all that flows from it.

I fully expect that throughout the entire course of this debate there are going to be any number of efforts to fuse on to the government-sponsored option all of the appeal of the partnership model, but thus far we have not been able to arrive at a partnership model that satisfies both of the partners.

Mr Jackson: In your statement that there is some interest by plan members in, I think the words were, "making the amendment process more efficient," surely you were not implying that the members in any way feel the elimination of consultation and participation as is proposed in this amendment. Can you find me one single plan member who has conveyed to you an interest in the model you are promoting?

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Hon Mr Conway: It is quite true that most people that I have spoken with have favoured the partnership option.

Mr Jackson: So the answer is no, you cannot find one person who suggests that a more efficient approach to amendment involves the removal of the consultative relationship as proposed in this amendment to the amendment.

Hon Mr Conway: I said earlier that I have met a lot of plan members who have expressed a lot of frustration about the kind of amendment process we have had over the past number of years, because of the slowness of the Legislature to act. There has been quite a bit of frustration that I

have heard over the 14 1/2 years that I have been a member of the Legislature.

Mr Allen: What about the government?

Hon Mr Conway: Government and Legislature, under that previous world. That is the point I am making.

Mr Jackson: You are going to get no speeding ticket for the 18 months you have had to deal with this matter.

Hon Mr Conway: I expect none of that. With respect, I am just speaking to the point I made.

Mr Jackson: My second question is, during the course of negotiations, informal or formal, at any time when discussing the government-run model, was there any recognition on the part of the teachers that they would support, in any way, shape or form, a model which specifically eliminates them?

Hon Mr Conway: The point I was making—

Mr Jackson: No, I understand the point you were making in terms of time and your discussions. You implied earlier that OTF understood that and there was clear understanding with respect to the fact that there would be your amendment, which we are not speaking to; we are speaking to Mr Morin-Strom's amendment. But I put that concept in the positive, that was never discussed with the teachers, that they would agree to that model of nonparticipation, that the Lieutenant Governor in Council could act alone under a government model, if there was any interest or support or discussion around that from the teachers at any time. I certainly would like that cleared up for the record because when you addressed this about five minutes ago, which is when I was trying to get recognized by the chair, you implied that. I would like that cleared up before we proceed.

Hon Mr Conway: The question is as circuitous as the old Intercolonial Railway.

Mr Jackson: We know you are really vamping when you bring in Via Rail.

Hon Mr Conway: What I have simply indicated is that there has been a lot of discussion. I have heard teachers and members of the Legislature and even members of the public express a great deal of opinion about this issue. The point I was making was that among the many observations that I have heard over the years has been a frustration about the length of time it has taken the government and the Legislature to move forward on some of the amendments that had been agreed to in a previous order.

The intention here is not to in any way rule out consultation. Obviously, consultation is not a legal requirement. It has been the practice in the past and I expect it to continue in the future.

Mr Jackson: Just so we understand each other clearly, it is your understanding that at no time has OTF suggested or hinted or even discussed that it could support a cabinet-only-run plan as purported in the government-run plan.

Hon Mr Conway: OTF has appeared before this committee. They have made very plain their view, and I understand that you understand their view.

Mr Jackson: So you concur with that point?

Hon Mr Conway: I just know that they have come and made very strong and clear submissions to the committee. They have certainly made those views known to me, and I do not need to speak to the position that the Ontario Teachers' Federation has taken.

Mr Jackson: One last approach: The minister can say very clearly that in a joint plan it is clear that at no point have the teachers accepted that under a configuration without binding arbitration or a dispute resolution model. I just want the minister to acknowledge with the same degree of clarity that at no time have the teachers ever considered accepting a government-run model which the cabinet the sole power without the amendment, which I support, that Mr Morin-Strom has moved. Do you understand that?

Hon Mr Conway: I want to be quick to repeat the point I made earlier, that throughout the piece, as I understand it, my involvement has not only been as Minister of Education these last three or four months, but previously as a member of the Legislature and a member of the executive council.

Certainly my memory of those events is that the Ontario Teachers' Federation has always argued the case that the preferred governance model was certainly the partnership option. There is no question about that. I cannot remember a dialogue that has been had with the OTF over the last 16 or 17 months when that was not clearly their point of view.

Mr Jackson: So you know that a government plan that contains a cabinet-only mechanism is completely unacceptable. It is the same point that you have been able to bring with very simple short language with respect to why you are not accepting—I just want to understand. You are prepared to move off the joint model because of what the teachers have indicated is their difficulty, but you are not prepared to move off

the government model based on similar arguments about the teachers' inability to live with it.

Hon Mr Conway: I would want to be very clear with you and I would want to be clear with the committee and the Ontario public, that when I have—

Mr Jackson: We are talking about 158,000 citizens of the province whom we are dealing with here.

The Chair: Mr Jackson, you have asked a question and the minister is trying to answer.

Mr Jackson: I did not indicate I was finished.

The Chair: I thought that you had a question. You may want a second question, but I think you have asked a question. Does the minister want to try to answer that?

Hon Mr Conway: I want to be clear and I want to be helpful and I want to be courteous in saying that there is no question that the teachers' federation would very much prefer the partnership option, and it is with some regret that I must report that we were not able to achieve an agreement on the partnership option. I think it is fair to suggest, as I think Mr Jackson has, that the teachers would view the government-sponsored option as something much less attractive.

But I have to say that in offering the government-sponsored model at this particular point in time—I want to be honest and candid and consistent—in putting that forward, I have to ask people to understand it and to accept it for what it is. It is a government-sponsored option and it is not the partnership model. Having made that decision, there are a lot of things that flow from it.

I could not accept the amendment being offered by my friends in the opposition, simply because it assumes a different foundation. It assumes a partnership model.

Mr Jackson: No, it does not.

The Chair: If I may, I think we are getting to repeat ourselves. Dr Allen and Dr Morin-Strom have not yet spoken for a few minutes, so Dr Allen, please.

Mr Allen: Mr Morin-Strom's amendment is clearly not an attempt to move the government-run model back into a full joint partnership model.

What is disturbing about the government's amendment and the original clause, which is slightly amended in the government's amendment, is that it gives virtually unlimited power to change any and every aspect of this legislation. That has not been the tradition of the way in

which amendments have been arrived at the Legislature in the past.

What I view the government's amendment to be is not an attempt to construct a good piece of pension legislation for the Teachers' Superannuation Act but a big bargaining stick in ongoing negotiations with the teachers in order to hammer them into shape to accept the partnership model that the government wants but that the teachers do not want. I think that is an unusually cynical approach to legislation.

This legislation should be valuable in and of itself and for itself and it should do all the good and proper things that a government-run plan should do. The one good and proper thing that it should do is that amendments that come forward ought to come out of agreements. They ought to come out of agreements with the Ontario Teachers' Federation and come to the House as has almost without exception been the case in the past.

I do not remember dealing with any of the other previous rounds of legislation where the amendments were not ones that were supportable by us because they had come out of that process. I simply say to you that I think this is part of an ongoing set of bargaining tools rather than a representable piece of pension legislation.

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Hon Mr Conway: I would just like to respond, if I might, to the views that my friend from Hamilton has advanced, because I think there was some confusion about what the old order was.

The older order was a situation, remember, where the superannuation group representing OTF and the government sat around in a biannual process and deliberated on a number of these issues having to do with amendments, what have you. But then there was the Treasurer, who had the sole responsibility for the management of the fund. Those two functions were separated. Under the new arrangement they are brought together.

I have to tell you that under a government-sponsored plan, let us not kid ourselves, amendments could very well have significant financial implications in a fund which has billions of dollars involved. Now, surely, I come back to the point that—

Mr Allen: You are dealing with the argument you are going to be using three months from now.

Hon Mr Conway: I want to be heard simply to be saying that we are talking. We were not able to arrive at a partnership model, and I cannot believe that I am really being asked to endorse a

principle where the government will accept all of the responsibilities, though people who are not prepared to accept the financial consequences of those decisions are none the less to have equal partnership in the determination of plan amendments. That again, I think, offends common sense.

I am not suggesting that one could not argue the case. You could certainly argue the case under a partnership model, but to have a situation where you would have equal partnership in the control of plan amendments, which would and could have significant financial consequences, but one half of that group is not going to accept any of the responsibilities for those decisions is simply not consistent with the notion of a government-sponsored plan.

I remind you, the past practice is different from what is intended here. We are putting together the fund management with the benefit determination. So you are, I think, confused about what has existed in the past and how this relates to it. Remember, in the old order it was the Treasurer of Ontario who had the exclusive control of the fund.

Mr Allen: I recognize that, but what I am saying is that as it is written and as it is struck, it strikes me that in the present context the government is using this proposal as a bargaining stick in an ongoing set of negotiations rather than treating this proposal of a government-run plan in terms of the best option that is available under a government-run plan and which, from our point of view, catches up the best of what happened in the past with respect to the way in which amendments are arrived at. I remind you, this does not imply that the government has to come to an agreement about everything, only about those items that it considers appropriate from its side are manageable and fundable and all the rest of it.

Hon Mr Conway: I would respond to that by simply asking you to reflect upon not just the good of the old order but the not-so-good of the old order. I do not believe we would be here dedicating so much of our pre-Christmas season to this debate if, under the old order, we had a good plan that managed to get itself, in the government's view, in very real trouble by virtue of offering benefits that were not at all well secured, benefits like the indexation, which in our view is now very badly underfunded.

We have already, as a government on behalf of the people of Ontario, rightly or wrongly, said we will accept whatever unfunded liability has accrued from 1975 through to 1989 as a result of

whatever decisions of the good old days. But in fairness to the taxpaying people of Ontario who will be asked, who will be expected, to pick up a multimillion-dollar unfunded liability—

Mr Allen: Who can save millions of dollars by virtue of your ability to borrow from this fund at low interest rates. Come on.

Hon Mr Conway: That assessment I do not share to nearly the extent that you might wish me to.

I am just simply asking people to reflect upon the good old days. The good old days produced a good plan. Unfortunately, it is a good plan that is in real trouble. One of the reasons it is in real trouble is that it agreed to benefits without clearly understanding their cost implications. Some 14 and 15 years after a government of this province, working closely with the teachers' federation agreed to full indexation, we now find ourselves in a situation where the fund is in real trouble, with a huge unfunded liability that we are determined to deal with, and the way we have chosen to deal with it is we are going to accept it. We do not expect the plan members who benefited from that to share in that responsibility.

But as we look to the future, and being mindful of the teachers, who rightly want a good plan—I want them to have a good plan, one that is good and healthy and viable that will meet the expectations and the defined benefits it offers into the future on the one hand, while on the other not wanting a successor Legislature or government in five or 10 or 15 years to be faced with what we are faced with.

Mr Morin-Strom: Well, it was a nice speech.

Hon Mr Conway: It happens to be the government's view.

Mr Morin-Strom: But it had no relevance to the amendment to the motion, okay? Those points are addressed elsewhere in the plan.

What we are dealing with here is how the government, in this case the cabinet, is taking a power to make future changes to the body of the plan. The cabinet is giving itself the right to make arbitrary changes in terms of definition of membership to the plan, definition of a credit for service, specifying member's contribution, setting up of pension levels, payments upon termination of membership, disability pensions, ability of defining who can be a member and who cannot be a member. It goes on—spousal pensions. There is clause after clause which the cabinet is taking the right to be able to change. Previously that right did not exist with the cabinet.

My amendment does not preclude the government from moving to change the plan even under a government-run plan. My amendment says, if the cabinet wants to do it on its own, it has to do it in agreement with the Ontario Teachers' Federation. We think that is a reasonable request.

The government always has the right to go and change the bill. The government can go to the Legislature and ask for a change to the bill. We are not precluding that. That has been the historical reality and it is the cabinet trying to take away a power that was vested in the Legislative Assembly of Ontario. Issues that should be addressed by the Legislature are now going to be able to be addressed unilaterally by the cabinet.

Surely the minister must recognize that that is an assuming of new powers that the cabinet did not have previously and in fact, understandably, the members of the plan have to feel they are in jeopardy. They have no assurance that changes are not going to be made in an arbitrary fashion to their disadvantage without the opportunity for it to be either agreed to—I am saying you have two choices. You can get it agreed to by the OTF or you can move a bill and come back and change the bill and change the plan that way. It is not granting the OTF a veto over any future plan because you will have that same power you had historically to be able to go and change the bill.

Hon Mr Conway: I never suggested it was giving them the veto; far from it. I am simply saying that it gives them equal standing on amendments that have—well, I see some people expressing some angst over this, and let me be clear: This is the government-sponsored option. We get the risks; we get the protection.

Mr Jackson: But you are picking up more power when you cite the historical references to how this has been operated in the past, and that is misleading.

Hon Mr Conway: I cite only the historical reference, because the taxpayers of Ontario are getting to pick up a multi-billion dollar tab—

Mr Jackson: That is not what we are talking about. We are talking about power shift here.

Hon Mr Conway: —because of some of the—

Mr Jackson: We are talking about power shift.

The Chair: Mr Jackson, please.

Hon Mr Conway: The other point I want to make is, remember that a number of these items would certainly apply under a later move if there were to be one to a partnership model. You always have to keep that in mind, that we have

designed legislation that does not preclude the move at a later date to other possibilities.

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The point that Janet Skelton and Dr Morin-Strom were debating earlier contemplates the possibility of a member-run plan. That is why section 7, I believe it was, was amended the way it was. We do not expect it tomorrow, but we have to provide for that. This amendment to section 9 contains a whole series of things that I believe we would want as part of a partnership option at a later point.

Mr Morin-Strom: How could a partnership model coexist with this clause? How can we go into a partnership model and have a clause like this in the bill?

Hon Mr Conway: It might very well, in some particulars, have to be amended, but I am simply making—

Mr Morin-Strom: Oh, so now we have to go back to the Legislature to get a partnership model. I thought the whole purpose was we did not have to do that.

The Chair: I do not know which of the two gentlemen had his hand up first, but it seems I will take Mr Keyes.

Mr Keyes: May I make the comment that the importance of this is that in the event we go to a partnership model, subsection 10(5) sets out additional controls on section 9, but it is still necessary to be here so that it can go forward in either way. It can stay as a government model, or with it here, it can go through to a partnership model, which once again the government has said it favours. Section 9 would continue to stay as it is, but any of the functions carried out in 9 would be totally limited by 10(5). I just suggest you read both of them in context.

The Chair: We have an amendment to the amendment.

Mr Jackson: Would it not then be simpler to simply put in the joint model and then leave open to further discussion the dispute resolution mechanism? I just heard your rationale, but is that not exactly what you are saying?

Mr Keyes: What I would prefer to see here, if I might be so bold, is that deal with this section 9 and then set it down—no.

The Chair: "Postpone" is the word.

Mr Keyes: The word I want is "postpone," thank you.

Postpone that one. Again, that is why we said in the very beginning tonight we would prefer a decision on governance left until later, but we

have given this other way. Therefore, the amendment dealt with here is still open until next week, and if there should be some meeting of the minds in this whole committee that partnership is it, you have what is required there in subsection 10(5).

Mr Jackson: Now, who is wasting whose time?

Hon Mr Conway: I think you should observe that in the following section there are provisions that constrain the exercise of cabinet authority under a partnership model.

Mr Keyes: That is what 10(5) does.

Hon Mr Conway: And that was the point that I was lamely getting to a few moments ago.

The Chair: Mr Reycraft.

Mr Reycraft: I just wanted to make the same point.

The Chair: The same point. I think we have been somehow moving from the amendment to the amendment and back and forth again. Are you ready to take a vote or ask for a postponement?

Mr Reycraft: Has the amendment to the amendment been moved?

Mr Keyes: Yes, by Mr Morin-Strom.

The Chair: Are you willing now to take a vote on this amendment to the amendment?

Mr Morin-Strom: A recorded vote.

The Chair: A recorded vote. So we are taking a vote on Dr Karl Morin-Strom's amendment to subsection 9(1).

The committee divided on Mr Morin-Strom's motion, which was negatived on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft.

Ayes 3; nays 5.

The Chair: Okay, we now have an amendment, which is 9(1) that I would like to now take a vote on, if we are willing. Those who are for the amendment, as presented, to subsection 9(1)?

Mr Jackson: I have one question.

The Chair: Do you want further discussion on that?

Mr Jackson: Yes. We are either to believe that the minister, with your amendment, is prepared to proceed for a very brief time, and at some point in time in the future is going to change

this all around, so we really should not be too worried about this, or we are to believe that you are going to live with this for some time. Do you really feel that you can restrict members who are currently in the plan without consultation with plan members? Do you really think that you could morally defend that singular argument?

Hon Mr Conway: Consultation is practice; it is not law. I fully expect the consultation to continue. I would not want to leave anybody with the impression that this well-established, very helpful dialogue will not continue into the future. It is not reasonable to imagine that. I want to be as clear on that as I possibly can.

Mr Jackson: I watched the six o'clock news tonight. I would have liked to have gone out for dinner before this evening meeting. I saw a group of teachers who had parked themselves in your office for the very reason that you were unwilling to consult on these matters.

I further should inform you, advise you—your colleagues were present for the presentation by the Federation of Women Teachers' Associations of Ontario—that a member of your cabinet refused to meet with the women teachers on an element of the plan in terms of benefit adjustment that is highly discriminatory in terms of how it affects young women teachers during pregnancy. For you to suggest that consultation is an ongoing, entrenched consideration by your government, I think, is bordering on the misleading.

Hon Mr Conway: The good thing about having been around for 14 1/2 years is that I can recognize grandstanding when I see it.

Mr Jackson: Were you aware that your Minister without Portfolio responsible for women's issues (Mrs Wilson)—

The Chair: Mr Jackson.

Hon Mr Conway: I have just seen a CNE exhibition.

Mr Jackson: I have not finished discussing. Are you just going to catch me interrupting or are you going to catch the minister interrupting?

The Chair: I thought you had finished, but you seem always to have another question that you place right after one.

Mr Jackson: The minister enjoys the jousting. I am merely trying to get my points across.

The Chair: You asked a specific question. You asked if he was aware, and I wanted him, if he wanted, to answer.

Mr Jackson: He was not answering. He was referring to grandstanding. If he would answer my question, we would get somewhere.

The Chair: Do you want to answer that question before Mr Jackson places another question?

Mr Jackson: My question was, were you aware that your minister responsible for women's issues has refused to meet with the women teachers of this province on issues that are clearly involved with subsection 9(1), which we are talking about?

Hon Mr Conway: Listen, all I know is that members of the executive council and members of the Legislature on all three sides, to the best of my knowledge, have met a great number of times in a great number of places over the last 16 to 18 months. I myself, like most, I believe, if not all members of the Legislature, have been actively involved in that.

I must be quite frank and say that I am one who believes that to consult is not necessarily to agree. There are people out there who seem to translate consultation as agreement. I have had a very lively dialogue over the last couple of months with the Ontario Teachers' Federation, good people, able, effective people. I will tell you that when I look at what they were able to accomplish in 1975 with the indexation provisions, I do nothing but genuflect in respect with the tremendous effectiveness of their—

Mr Jackson: And with your support, as I recall.

Hon Mr Conway: I think that was done before I was elected.

I will tell you that what was done here in 1975 bespeaks the enormous capacity and tremendous track record of the Ontario Teachers' Federation. They are an Everest of achievement when it comes to having an impact on the public policy of this province.

I just have to say to you, as I said to them, that I am not one who accepts the idea that to consult is to agree. In fact, the OTF and I have discussed at some length. There has been some agreement but I must say to my friends, the committee in the room, that there has been an ongoing fundamental difference of opinion on a number of things. Some people might translate that to mean, "Well, he will not consult." I do not believe that to be a lack of consultation, though I do accept it as not agreeing.

The Chair: Do you have another question, Mr Jackson? Then I have Mr Keyes.

Mr Jackson: That is why I specifically made reference to the point of the member of the cabinet who refuses to meet. That is why I specifically made that reference. There is no

confusion on the point of whether not agreeing constitutes lack of consultation.

We have a case of a minister who is responsible for women's issues who refuses to meet with the Federation of Women Teachers' Associations of Ontario. I for one cannot accept your statement that you can speak on behalf the Treasurer, who is intimately involved in this legislation, and that you cannot speak for the minister of your cabinet responsible for women's issues, who should be advocating on behalf of the plan members and superannuated teachers who raised these points. That is what I was asking you to clarify.

I know it was an oversight that in your recognition of the enormous impact the teachers had in 1975, you neglected to reference the capacity of the government of the day to respond through consultation.

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Hon Mr Conway: There have been biennial reviews under this government, for example. I myself, I well remember, if I can engage in a slight bit of self-congratulation, the teachers coming to me in my previous life as Minister of Education and saying, "Minister, there is a serious problem about a number of teachers who we think should be provided with an early retirement option." OTF made a very, very good case that I acceded to. I thought they were just great. They had a very good case and I accepted it. I think the plan has paid out hundreds of millions of dollars to effect a very good benefit improvement. It was very much supported by the government because we thought it spoke to a very important public policy and we were agreed.

I am just thinking out loud about the kind of dialogue I have had, the kind of change we were able to bring about. I think that is no mean feat, though.

The Chair: Mr Conway, actually Mr Reyecraft got credit for that the other day. Mr Keyes, please.

Mr Keyes: Once again, if I may try, I think that too often we look at these amendments and clauses in isolation. We should be looking at them a little more closely with something that follows them.

Within section 9 again, I direct you to subsection 2. People who came before us seemed to suggest that the cabinet was going to run off in all directions and probably cancel the plan, rescind the plan, change the benefits, all of those things that could be nightmares, but do not forget

what the Pension Benefits Act provides in control.

I refer you to the very bottom, to subsection 9(2), "To the extent that an amendment to the pension plan conflicts with the Pension Benefits Act, 1987 in a matter in which the conflict is not authorized by this act or schedule 1, the amendment is void."

There are controls built in here so that cabinet is not going to run off willy-nilly doing things that are totally against what other legislation provides for.

The Chair: I would like to remind the committee we are seven minutes from the agreed adjournment.

Mr Jackson: Madam Chair, since you did not cut off the minister when he was reminiscing, I feel that I am at least allowed to—

The Chair: I did. If you saw me, I did cut him off.

Mr Jackson: Well, as you limited his discussion then, I will do likewise and simply indicate that quite clearly the minister in his previous role as minister, in his first stint, was highly moved by his position in minority government and the anticipation of a provincial election.

We have yet to determine what magic he is about to perform with the teachers of this province as it relates to the issue of the size of his majority and the fact that there is an election not too distantly anticipated. I would not want him to take too much of the credit for what the electorate had the wisdom to do in delivering this province a minority government in 1985.

The Chair: Thank you, Mr Jackson. I do not know whether the minister wants to respond, but I have had Dr Morin-Strom waiting for quite some time.

Mr Morin-Strom: I think we are dealing with an amendment from the government.

The Chair: That is correct.

Mr Morin-Strom: Most of the comments are not relevant to the amendment.

The Chair: It is true.

Mr Morin-Strom: Perhaps the chair could be a little more careful in keeping the comments on the amendment.

The Chair: You are right. We are talking, though, about this governance issue which has many, many tangents to it, and I am very conscious of that.

Are we ready for the vote on the amendment as presented by the government to subsection 9(1)?

You are agreed? May I consider this amendment carried?

Motion agreed to.

The Chair: Okay. That vote has been carried on subsection 9(1).

Mr Morin-Strom: That was to vote on the amendment?

The Chair: That is right. Now we are going to vote on the section now as amended.

Mr Reycraft: Madam Chair, before you ask the question on section 9, I would like to formalize what Mr Keyes suggested a few minutes ago, that we stand down or postpone section 9 until we return to clause-by-clause next week.

I remain convinced that the best of the three options for the teachers of this province that have been put forward is the partnership model. I think it will permit the teachers of this province to take security from the fact that no government will ever be able to reduce their benefits without their consent should there be future deficits in the fund. It will provide the possibility that should there be surpluses in the fund, they will enjoy those surpluses either in the form of improved benefits, or if the government does not consent to that and exercises that so-called veto, they would then enjoy the benefit of reduced contribution rates.

I think that in either scenario the teachers are the clear winners and I regret the fact that the Ontario Teachers' Federation, because the partnership model is not its ideal because it lacks the binding arbitration provision it has requested, has withheld its consent to that partnership model. I would hope that reason would prevail and that somehow we could find some accommodation before we institutionalize section 9 in the bill. I would ask that it be stood down until Monday.

The Chair: You are asking a postponement of the amendment we have just made?

Mr Allen: This is saying in other words what I said rather succinctly a little bit earlier.

The Chair: I am willing to accept a motion to postpone the amendment we have just made because we have now, at this moment, a new section 9(1). We have just had that carried.

Mr Jackson: We still have my amendment to deal with.

Mr Morin-Strom: We have a new one before the committee, but it has not been voted on.

The Chair: Yes, it was voted on and was carried.

Mr Morin-Strom: No, just the amendment was carried. It was reworded. I am waiting for the substantive debate on whether the section should be in the bill or not.

The Chair: Right.

Mr Morin-Strom: I think Mr Jackson has a motion to delete it. That is probably not in order.

The Chair: That is right.

Mr Morin-Strom: We should have a substantive debate on whether the section should be in the bill or not. It is one of the key aspects of the whole bill.

The Chair: We have not had that debate yet. We have had the amendment.

Mr Morin-Strom: I suspect we will not have time to complete that debate, so I think we probably should adjourn.

The Chair: Before we adjourn, I have a request and a motion to postpone the discussion on—

Mr Jackson: If we postpone it, then we cannot revisit it. We revisit it at the pleasure of the committee. We do not revisit it in order. Is that not correct?

The Chair: The alternative, as we know, is that we can adjourn at this moment.

Mr Jackson: I was seeking clarification on the point.

The Chair: We can adjourn at this moment and keep this as our item of discussion and we will resume where we left off, which would be section 9.

Mr Jackson: Fine. My understanding is that should we postpone, we are not guaranteed that we reconvene on this at that time.

Mr Reycraft: Not at all, Mr Jackson. The whole purpose of postponing it is to allow the committee to go back to the section. If the section is voted on, then the only way you can reopen it is by unanimous consent, as I recall.

The Chair: That is right. We can either adjourn or postpone at this moment.

Mr Allen: By the same token, postponing might well mean being postponed beyond the opening point of our next meeting.

Mr Morin-Strom: I think we should continue the discussion on this section when we return on Monday.

The Chair: All right. Then I would ask that we know what is happening to us next Monday. As far as I understand it, we are going to be meeting at three. I would like to bring you in about 3:25 if possible because we are going to elect a new vice-chairman at that meeting. As you know our committee composition has changed. Then I would like to begin at section 9 where we are leaving off tonight. We will meet until six o'clock.

We have meetings on Monday night from seven until nine or 9:30, whichever we choose; Tuesday again and Tuesday night again. I really hope that we will be able to complete this hard work because there are a lot of people waiting for our decision.

I also want to say before we adjourn tonight that there was a kind of subcommittee meeting yesterday. It had to be done very quickly. I touched base with all three parties. As I understand it, we are going to be meeting between sessions with Mr Allen's request regarding the food bank subject. As I understand it, and these are all very preliminary discussions, we will be meeting in the first two weeks of March, or a week of March, likely the first week of March on that bill, because when the House is not sitting we can meet morning and afternoon. It is 12 hours, so we will fit it in that first week of March. The first week of March is, I think, what we are going to be given.

Mr Allen: We have 12 hours?

The Chair: Yes.

Mr Allen: Is that the same week as the March break?

The Chair: No, the very first week of March. That has not been formalized but that is a rough idea. I just wanted to give you an indication of where we are going.

Thank you very much. I am glad we got something done tonight. I hope our discussions next week will continue in a very positive manner.

The committee adjourned at 2130.

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Vice-Chair: Fawcett, Joan M. (Northumberland L)

Allen, Richard (Hamilton West NDP)

Cunningham, Dianne E. (London North PC)

Elliot, R. Walter (Halton North L)

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Johnston, Richard F. (Scarborough West NDP)

Keyes, Kenneth A. (Kingston and The Islands L)

Neumann, David E. (Brantford L)

Stoner, Norah (Durham West L)

Substitutions:

Conway, Hon Sean G., Minister of Education, Minister of Colleges and Universities and Minister of Skills Development (Renfrew North L) for Mrs Stoner

Morin-Strom, Karl E. (Sault Ste Marie NDP) for Mr R. F. Johnston

Reycraft, Douglas R. (Middlesex L) for Mr Grandmaitre

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Education:

Conway, Hon Sean G., Minister of Education, Minister of Colleges and Universities and Minister of Skills Development (Renfrew North L)

Skelton, Janet, Manager, Teachers' Pension Policy Unit



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Legislative Assembly of Ontario

Standing Committee on Social Development

Teachers' Pension Act, 1989

Second Session, 34th Parliament

Monday 18 December 1989



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 18 December 1989

The committee met at 1600 in room 151.

TEACHERS' PENSION ACT, 1989 (continued)

Consideration of Bill 66, An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act.

The Chair: Time is marching on. Is there a Conservative member in the hall, Mr Johnston?

Mr R. F. Johnston: I saw one once. I walked right by.

The Chair: Is he on his way into this room?

Mr R. F. Johnston: No, he is busy upstairs and I think we should probably proceed.

The Chair: Then I would like to call to order the standing committee on social development. We are in the process of examining Bill 66 clause-by-clause.

Before we do that, however, today I would like to ask you to deal with the election of a vice-chairman to this committee. One of our regular members of this committee is unfortunately away today, due to a sudden death in his family yesterday, and that is David Neumann. Anyway, I understand that his is one of the names, at least, that was to be presented today and we have consent from his office to proceed if his name is still being considered.

Mr Elliot: I would like to place in the name of David Neumann for the position of vice-chair of this committee.

The Chair: Thank you, Mr Elliot. Are there any further nominations for the position of vice-chair? All right. As I say, we have had the consent of Mr Neumann. Unfortunately, we do not have it in writing, in that this was a very unexpected circumstance that he not be here today.

Those who are for the election of Mr Neumann to the position of vice-chairman of the standing committee on social development? Against?

Mr Neumann will be duly informed that he has new responsibilities. It looks like a total reversal. As you know, he was the chair and I was the vice-chair and now it is a turnaround.

If my memory serves me well, ladies and gentlemen, we are at section 9 of this Bill 66.

Mr R. F. Johnston: Can I raise a point of order?

The Chair: Please, Mr Johnston.

Mr R. F. Johnston: It is just that, although I think we should proceed, I would caution us against taking any votes until we have a Conservative member here, if possible, so we can stack or leave open questions—

The Chair: Here he is.

Mr R. F. Johnston: Talking always brings around the fruits that you want.

The Chair: Especially if you are doing the talking, Mr Johnston.

I understand that we are waiting for the tabling of some NDP amendments further to this section. We have before us the government amendments which I would like to have considered at this time. Who is ready to proceed with the government motions on governance?

Hon Mr Conway: If I could, Madam Chair.

The Chair: Subsection 9(1), the government motion.

Hon Mr Conway: I went away on Wednesday night, I believe it was—

The Chair: That is correct.

Hon Mr Conway: —and I was thinking about some of what had been said in terms of concern about the amendment which I had before you. I quite frankly wanted to respond to some of that. I would like to do so by withdrawing the amendment that I had before you and replacing it with really two amendments: a new subsection 9(1) that would, I think, clarify and soften some of the impacts that members were concerned about and a subsection 9(1a) that would provide a notice period so that plan members would have comfort, at least in knowing that the cabinet could not amend without some notice period.

I was just simply going to begin today's proceedings by indicating that I would like to withdraw subsection 9(1) that you have before you and put in its place—

The Chair: Mr Conway, have you had these copied? Have you got a copy for each person?

Hon Mr Conway: Yes.

The Chair: I had a strange feeling that this might happen.

Mr Morin-Strom: Madam Chairman, I do not believe that it is possible for him to do that.

The Chair: You do not?

Mr Morin-Strom: This clause was debated and passed last time.

The Chair: Subsection 9(1)?

Mr Morin-Strom: Yes, the amendment was passed. We were about to enter the debate on the section as a whole.

The Chair: That is not my recollection and it is not the recollection of the—

Mr Morin-Strom: I think the clerk may have better records.

The Chair: So that is impossible, so—pardon?

Mr Jackson: Anything is possible.

The Chair: Okay, I guess I have to ask for unanimous agreement if we are going to consider new material the minister wants to give to us.

Mr Jackson: Could we have a look at it first?

Mrs Fawcett: Can I get a clarification, Madam Chairman? What was postponed?

The Chair: I guess we postponed—I am sorry. I thought it was the amendment as well, but it is the section 9 as it is here, not the amendment.

Hon Mr Conway: I will be quite happy to circulate these. I was trying to respond to some of the concerns that were raised. I am more than happy to have members have a look at these, and I am in the committee's hands, obviously.

The Chair: I would like to ask for unanimous consent before you even do that, unless people want to look at them before they are ready to vote, which they have a right to do.

Mr R. F. Johnston: I just think it might be helpful to circulate them and for members to have a look at them and we will find out what the good wishes are.

The Chair: Okay, then we will decide whether we are going to have unanimous consent after we circulate.

Mr R. F. Johnston: I think we can have a better idea about that unanimous consent. Of course, members know that even if we do not reopen at this stage, it is possible to reopen it taking it back into the House. But there is really no point in doing that. If it is the government's intention to move on this, it seems to me that it makes sense for us not to delay us unnecessarily in the House at Christmastime and to deal with it propitiously here, unless it is something which is so offensive to the opposition parties that it would be something that we would want to stay here over New Year's for.

The Chair: I am sure that is what you are going to spend your New Year's Eve doing, Mr Johnston.

Mr R. F. Johnston: It has been done before, as it seems, out west.

I also want to be sure before we do pass this that the government will send information to the appropriate people in the public that will have this new information in it, rather than information that preceded its last set of amendments, as we have seen recently done with other legislation affecting the education community.

The Chair: I will do my best as chairman to make sure each person who needs it gets the most up-to-date information possible.

Hon Mr Conway: What is it? To err is human; to forgive—

The Chair: Okay, could you please look at these as quickly as possible so that we can decide whether we are going to proceed with unanimous consent to consider them?

Mr Morin-Strom: We would consent to reopening to do this.

The Chair: Excuse me, this committee is in session and I would ask each person to be attentive to the proceedings. It is very difficult for me hear the members. Sorry, I did not hear you, Mr Morin-Strom.

Mr Morin-Strom: We would consent to reopening this subsection. It appears that (g) and (h) have been deleted from the subsection, which appears that it might slightly reduce the dictatorial powers of the minister and cabinet to throw out the the whole plan and start with a new one.

The Chair: With that choice of words, we will accept your consent.

Mr R. F. Johnston: Any deletion is helpful; I accept it.

Hon Mr Conway: Well, it is offered simply because I thought the member for Sault Ste Marie made a good point about that particular position.

The Chair: And you heard him. Mr Johnston, did you want to say anything on this?

Mr R. F. Johnston: No.

The Chair: Mr Jackson?

Mr Jackson: Before I agree to unanimous consent, I had a question for the minister. When you left this committee on Wednesday night—and you have already referenced your long walk, I understand it was at the park, because you were reluctant or unwilling to return to your office that evening. However, during last Wednesday's deliberations you clearly indicated that you held out some hope that the joint model could

somehow still be salvaged, saved; both you and your former parliamentary assistant had indicated similar sentiments.

I just wanted to know if in fact you have taken it upon yourself to pick up the telephone and contact the Ontario Teachers' Federation or any of those representatives to make that offer or to discuss with them in any way the matters which were first disclosed publicly earlier on Wednesday, which was that the government was proceeding with a government-run plan only. To the extent that you were making that offer during committee time, I would like to determine if at any point you can point to having picked up the phone or contacted them to make that offer to them.

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Hon Mr Conway: I have most recently communicated with the Ontario Teachers' Federation by letter. I do not have a copy of the letter at hand, but I believe there was a communication in very recent days. As I recall, that letter indicated what our views were with respect to the partnership model, although I would have to have a copy of the letter at hand to be absolutely certain.

It is no secret that I availed myself of a number of public places, not the least of those being the legislative chamber, to outline the government's interest in and preference for the partnership option but what it is we cannot accept in so far as a dispute resolution mechanism is concerned.

To answer you specifically, I have not picked up the phone in the last 72 hours and engaged the OTF on this particular point, however.

Mr Jackson: Just so I understand you correctly, at this point you are not holding out hope, you are proceeding with the government model and it is your intention to hopefully have that matter solved today or tonight so that it can be facilitated.

I want to get a better sense of what you meant last Wednesday in committee in terms of what it was you were saying to the teachers of Ontario with respect to your hopes for the basic structure of Bill 66.

Hon Mr Conway: What I have indicated is that after a long discussion over many, many months involving many, many people from the government and from the Legislature, it is now time to decide this question.

The committee and the House have before them Bill 66, which provides a number of options in so far as governance is concerned. The legislation has been specifically drawn to allow and move from, let us say, a government-

sponsored option in first instance to a partnership or to a teacher-run, member-run option at a later stage.

But I do not want to mislead anyone, particularly my good friend the member for Burlington South. With just three or four days before the House is scheduled to rise for Christmas, we really do have to decide this question and it seems to me that we are not in a position to agree on partnership at this point. At this point—I stress that again—the profession has indicated that it is not ready to take the member-run plan, so it is clear that for purposes of this discussion, we are proceeding with the government-sponsored plan.

However, I do not rule out at all—in fact, I hold out the hope—that over time, and hopefully over not too much time, we are going to be able to resolve the issues at dispute over the partnership option, because there is no question in my mind that, in the view of the government, that is the preferred course of action.

Mr Jackson: At this point the minister may have signed the letter, but no one from OTF seems to be aware of any letter that has been sent. But we will leave that.

My last question is: Are there more amendments, other than these two, we can anticipate today or before the end of our clause-by-clause? Is this the sum and substance of your long walk and reflection?

Hon Mr Conway: No. I am going to try to move along. I think my colleagues know me. I am a very reasonable fellow and I am amenable to additional change.

I repeat, I thought the committee—

Mr Jackson: Are you amenable to telling us if you have more amendments?

Hon Mr Conway: I would hope to put additional amendments before you to—

Mr Jackson: May we see those additional amendments?

Hon Mr Conway: As we move along, yes.

Mr Jackson: What is the problem with tabling them?

Hon Mr Conway: Well, listen, I am not—

The Chair: As I understand it, at this moment we—do we all have the other motions from the New Democratic Party? I thought we only have the nine as well, but maybe everybody has them and I just do not have them at the surface.

Hon Mr Conway: Just to be perfectly honest, I have been looking at some of the other amendments.

Mr Jackson: Have you not been up to this point?

Hon Mr Conway: I have been very carefully looking at some of the amendments. For example, I think, Mr Jackson, I find myself in agreement with you in a number of places and I want to indicate that I do not have them—

Interjection.

Hon Mr Conway: Well, I want to say to the committee that there are a couple of places where I may be prepared to give even more. I am not clear I understand the purport of your amendment in one or two cases, so when I talk about additional amendments, I am looking at some things that have been offered by my friends. When we get to that section, I am quite prepared to indicate the willingness of the government to accept what I believe to be the intent of the opposition amendments.

The Chair: We are at the position where we can make a decision about unanimous consent in reopening subsection 9(1). Agreed? Then we are ready to do that. Minister, would you like to speak to these?

Hon Mr Conway: I would seek the permission of the committee to withdraw the amendment that we had accepted and voted upon, apparently, the other day—I apologize for forgetting that—and substituting therefor the new subsection 9(1).

Would you like me to read that?

The Chair: I think we have to do that for the record.

Hon Mr Conway: I move that subsection 9(1) of the act be struck out and the following be substituted therefor:

“9(1) The Lieutenant Governor in Council by order may amend the pension plan as set out in schedule 1 and, without restricting the generality of the foregoing, may,

“(a) determine the methods or formulae to be used to calculate any pension or other benefit, refund or interest rate provided under the plan;

“(b) increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan;

“(c) vary or provide a method for determining a variation in the rate of contributions required to be paid under the plan;

“(d) extend, modify or restrict the conditions upon which persons may become members of the plan;

“(e) regulate the administration of the plan;

“(f) determine the composition of the board and its powers and duties.”

At the same time, since it deals with section 9, if it is appropriate, I would just move that section 9 of the bill be amended by adding thereto the following subsection:

“(1a) Before making an order amending the pension plan, the Lieutenant Governor in Council shall give the Ontario Teachers’ Federation and each of its affiliates 45 days’ notice of the amendment.”

Mr Morin-Strom: Can we have two motions at once?

The Chair: No, I do not think we can, but I let him put them so that you would see the general package. We will have to deal with one at a time. Are there any comments, questions or discussions on the first amendment which I would like to consider, which is the longer one, subsection 9(1)?

Mr Morin-Strom: Yes. I wonder if the minister could tell us what the distinguishing characteristics are of clauses 9(1)(g) and (h) and why the minister has decided to withdraw them while not withdrawing the other six clauses. Why does he want to keep those powers for clauses 9(1)(a) to (f) but not for clauses 9(1)(g) and (h)?

Hon Mr Conway: The reason for striking out those two provisions was simply to try to allay the concern of members. I think the member from Sault Ste Marie was one of the members who was quite concerned about the possibilities that that sort of language suggested and I just wanted to try to soften the impact and lay aside any undue concern or worry.

We changed the word “assumption” to “formulae” just to make it even clearer about what was and was not intended.

The Chair: Is that a sufficient answer to clarify?

Mr Morin-Strom: It seems to me that the powers in clauses 9(1)(a) to (f) are tremendous in terms of what this motion would still be giving the Lieutenant Governor in Council in terms of changing the pension plan, particularly when one looks at words leading into the motion where it says, “The Lieutenant Governor in Council by order may amend the pension plan as set out in Schedule 1 and, without restricting the generality of the foregoing, may....”

In other words, “without restricting the generality” means that even if we have not listed everything here, we can do everything else we want to anyway. I am not sure that this change is really much in substance. It looks like the cabinet can change anything it wants through this clause.

The Chair: Do you want to respond again, Minister?

Hon Mr Conway: I think I have said all that I can say.

Mr R. F. Johnston: I do not think I do understand, though. Under the new amendment, what does preclude the government from doing what clause 9(1)(g) did in the previous amendment? If you have a clause that says, "without restricting the generality of the foregoing," and then have a number of these things laid down, what is it that legally would prohibit you from doing what clause 9(1)(g) did, which was, "rescind the plan and replace it with another pension plan"? What would possibly prohibit you from doing that? What is to stop you from doing that? Without mentioning it, if you have a generality, it would seem to me to allow you a fairly broad scope to do it anyway, whereas the other is just the precise wording for something.

1620

The Chair: I think the minister was asked the question. Is he ready to answer yet?

Mr R. F. Johnston: We are buying him time on that.

The Chair: Okay. You are buying him a bit of time while you conjecture what he might be hearing from his assistant.

Mr Jackson: Quite frankly, Madam Chair, clause (b) sets out that the cabinet has the power to eliminate or modify any pension. So, it could be open.

The Chair: Let us wait to see what the minister is learning here very quickly.

Mr Morin-Strom, some of these amendments that you have presented are brand-new and some of them are replacements. Is that correct?

Mr Morin-Strom: Yes, that is a new complete package. Some of them replace ones we had before and they are the same as before. But rather than mixing new versions and old versions, I think we can throw out the old package I have presented and work with this new package. As of today, we will put them all in one ordered sequence, all the motions I have.

The Chair: Mr. Jackson, do you have any new amendments to present?

Mr Jackson: I would like to eliminate the entire section. You are quite familiar with that amendment and I would still like to proceed with it, but I think that would be an exercise in futility.

The Chair: Well, you do not have a new package for us. I guess that was my question.

Mr Jackson: When you are that specific, the answer is no.

The Chair: Minister.

Hon Mr Conway: Some of the constraints, I think, that would certainly be at work are the constraints that are clearly spelled out in section 2 of the bill. Remember, we are talking about a pension plan that is a defined benefit plan that must accord to the provisions of the Pension Benefits Act, 1987. There is that clear constraint that would govern what a cabinet might want to do. I think we are going to be talking about this over the course of the next few hours and few days. There is, I think, a worry around the committee that somehow there is an unbridled executive power that admits to no check. One of the most important things we seek to do here is to make sure that the Pension Benefits Act, 1987 applies.

Mr R. F. Johnston: If I might, I am not sure that is a very precise answer to the problem. Presumably, any new plan you brought in might be able to do that and yet might be a different plan from that which we have here before us. I guess the question, phrased the other way, if I can put it that way, is, what is the flexibility you are after with your expression of generality if it is not to be able to do those kind of draconian things that were in the old (g) and (h)? What is the generality you are requiring that you worry there might be some specific that would cause you problems otherwise? That is the only reason for putting in that kind of expression.

Hon Mr Conway: That is normal drafting language, in my understanding.

Mr R. F. Johnston: That is nice of you to cover yourself.

Hon Mr Conway: We do it in all statutes, and you know that. There is a lexicon that is routinely used, and I think you—

Mr R. F. Johnston: But there are often lists that do not include them. I am asking what you want it for, especially when we have now seen (g) and (h), which are two fairly draconian things that, it seems to me, could fall within it and still be covered under subsection 2(2), which is that it must fit within the Pension Benefits Act, 1987.

The Chair: Do you have any further comments, Minister?

Hon Mr Conway: I just, quite frankly, was anxious to address what I thought were some of the legitimate concerns of the amendments before you for those very reasons. I do not think I can totally satisfy the—

Mr R. F. Johnston: You make me think there might be a wolf in sheep's clothing hiding behind eliminated amendments to do exactly what you wanted to do in the first place, which was to devour the pensions of the poor teachers of the province.

Mr Jackson: I am sure Mr Morin-Strom is flattered that we have amendments which are designed to appease him, but the question has nothing to do with that.

The Chair: There must be another place to get flattery, Karl.

Mr Jackson: The question is, what is the legal intention here? Is there no one from the ministry prepared to come forward and clarify that point? The minister is only falling back on the fact that he thought he was reacting to some strongly argued arguments that were advanced last Wednesday.

Hon Mr Conway: This should not be offered as an appeasement. I offer it as a clarification, and if you view it as appeasement, then I think you misjudged my motives. But perhaps one of the lawyers from the ministry might wish to comment. John Burton, do you want to?

The Chair: Another voice might be helpful at this time.

Mr Burton: Well, the intention in removing the power to rescind is simply to clarify that "amendment" does not mean "rescission." The power to amend is still there; the power to rescind, as has been clarified, is not there. The government's amendments cannot go to the extent of rescinding the plan.

Mr R. F. Johnston: In your view then, the government, under your revised section, could not rescind the plan, doing it within the Pension Benefits Act of the province of Ontario, and replace it with something else. It is your opinion they cannot do that.

Mr Burton: Under section 9, they could not rescind the plan as the motion has just been proposed.

Mr R. F. Johnston: What would prohibit it?

Mr Burton: They could amend the plan.

Mr R. F. Johnston: Out of existence.

Mr Burton: It could be a substantial amendment.

Mr Jackson: Could Hansard indicate the name of the individual who just answered?

Hon Mr Conway: John Burton.

Mr Jackson: Thank you.

The Chair: Actually, you were trying to tie it to clause (b) of this particular presentation that is before us in the amendment. Is that what you are trying to tie this discussion to?

Mr Jackson: What I just heard was that substantially modifying the plan could be tantamount to replacing it or rescinding it, but not quite.

The Chair: I heard "substantial" as a word.

Okay, are there any further comments, questions or discussions on the amendment that has been presented as subsection 9(1)? I guess it is time to take the vote on that then.

Those who are for the amendment that we unanimously consented to consider? Those who are against that?

I see two hands. Does the New Democratic Party want to voice a vote on this or not?

Mr R. F. Johnston: Take a recorded vote.

The Chair: Okay, then we will consider that subsection 9(1), as has just been read by the minister, is carried.

Mr Morin-Strom: Wait. The vote was on the amendment.

The Chair: Yes, on the amendment; we have not done the section yet.

Mr Morin-Strom: I thought you just said the section was carried.

The Chair: No, subsection 9(1) as presented in the amendment by the minister.

Now, I have another government motion regarding subsection 9(1a), which was read by the minister.

Hon Mr Conway: Do we not have to deal with subsection 9(1) first?

The Chair: Well, I thought we did vote on that and have agreed to accept it.

Mr Morin-Strom: We voted for the amendment.

The Chair: Right.

Mr Morin-Strom: Now we have to vote on whether we agree with the whole section.

The Chair: No, I have another government amendment.

Mr Morin-Strom: That is a new section to follow it.

Mr R. F. Johnston: There is no new section. It looks like it is clause 9(1)(a), which now reads "determine the methods or assumptions," etc. This, in fact, would be a new subsection.

The Chair: So this is an addition. I thought we usually dealt with additions before we dealt with the whole section.

Mr R. F. Johnston: It would actually be a new subsection outside this section 9, as I understand it.

The Chair: No, it would not.

Mr R. F. Johnston: Subsection 9(1).

The Chair: I know, but do we not deal with additions before we take a whole—

Mr R. F. Johnston: It is unclear as to what it is.

The Chair: I would like to deal with this 9(1a) and then deal with subsection 1 as a whole.

Mr R. F. Johnston: Am I incorrect, or do we not have to deal with subsection 9(1), as amended, now? Then we would proceed, following that, to subsection 9(1a), which is new.

The Chair: I am sorry if I am not taking that vote clearly. I still am quite new at this. I thought I had subsection 9(1), as amended, carried.

Mr R. F. Johnston: No. That is what Mr Morin-Strom was trying to ask you. What you just got was the new amendment of subsection 9(1), moved by the minister, approved. What we now wanted to have was a discussion on subsection 9(1), as amended, rather than the amendment to subsection 9(1) which was presented, if you follow.

1630

The Chair: Okay. We will take a vote on section 9 and then we will go to the amendment to that section, which is an addition to it. Right? Okay. That is not the way my head thinks logically, but in any case—

Mr R. F. Johnston: No one said this was logical.

The Chair: I would have put the addition in first, before I took the whole vote. Do you want me to ask, does subsection 9(1) carry?

Mr Morin-Strom: No, I do not want you to ask that. We want you to open it up for debate. We have the section as amended. Mr. Jackson has a motion to delete, which probably the clerk is going to tell you is out of order. We want to have a substantive debate on this section and then we can have the final vote on subsection 9(1).

The Chair: Okay. Are there any comments, questions or discussion on subsection 9(1), as amended?

Mr Jackson: Yes. I have an amendment.

The Chair: You have another amendment. Do we have that?

Mr Jackson: Sure, you do. I gave it to you Wednesday. I just have to find my copy.

The Chair: You gave it to us on Wednesday.

Mr Jackson: Yes.

The Chair: Did we have it on Wednesday? I do not have it in my pile.

Mr Jackson: I will just read it into the record.

The Chair: Mr Jackson moves that clause 9(1)(a) be struck out of the bill.

Okay. Are there any comments, questions or discussion on the amendment of Mr. Jackson on 9(1)(a) being struck? There is some concern by the clerk that it is out of order. "An amendment must not be inconsistent with or contradictory to the bill as so far agreed to by the committee, nor must it be inconsistent with the decision which the committee has given upon a former amendment." I guess, since the amendment has just passed and seems to be in conjunction with the same subject, the motion will be out of order.

Mr Jackson: I wish to challenge the ruling and state my case briefly as follows. We understood when we began clause-by-clause that we were working with a joint model. It was not until we began clause-by-clause, or were into it for a short time, that we realized the government strategy of developing a tripartite approach, the three models in that option, that it became abundantly clear what direction we were going in.

So it begs the question, how can it be inconsistent with the direction that the committee agreed on when the committee did not agree on that direction? The government simply, in midstream, announced that it was going with a government-run model.

To further exacerbate that situation, the minister complicated matters, as did Mr. Rey-craft, by indicating clearly that they held out hope that ultimately this bill could be amended before the end of the session. That is why I asked the question and persisted in inquiring from the minister as to what his mindset or his mood was now in terms of the future of the teachers' pension plan.

As the chair will be very much aware, we were not prepared to proceed until we got a clearer indication of what the government's intention was in this. In my view, the committee, at no point, has agreed on specifically the direction it would take with the bill.

The Chair: I would suggest that you have a very short memory of what we have just done within the last five minutes. I am sorry that subsection 9(1) has just passed and that is a definite direction.

Mr Jackson: No, that was an amendment.

The Chair: It was an amendment, but it gave a very specific direction to the way this section is going to be dealt with, if it is an amendment.

Mr Jackson: My reasons for deleting, which you did not listen to—

The Chair: I did listen as best I could.

Mr Jackson: My reasons for my amendment you did not listen to, because I did not give them. You made your ruling without having heard why I was advancing the amendment. That is another matter altogether.

The Chair: I gave the ruling because it is from our rules of order, which the clerk has informed me of, that directly apply, and those are the ones I have quoted. Mr. Morin-Strom.

Mr Morin-Strom: It seems to me the only decision we have made here today on subsection 9(1) is to eliminate two clauses. In fact, the only decision we have made is to start taking pieces out of subsection 9(1), and the motion on the floor just continues that process by taking further clauses out of this section. It seems to me, in terms of the initial decision, that this really is in order.

The Chair: “Further” is not the correct word; it is every subsection.

I am certainly getting the affirmation of my ruling from the clerk that we have made a decision, in not removing further, to keep those. If you want to delete one or two, that might be different, but to strike the whole section is very different. That is my ruling and it stands. If we want to take a vote on it now, it is not debatable, but you can talk to it.

There seems to be a request to vote on the challenge to the chair, and I think I should proceed with that.

Mr Jackson: Could we have a recorded vote?

The committee divided on the ruling of the chair, which was agreed to on the following vote:

Ayes

Conway, Elliot, Fawcett, Keyes, Reyecraft, Stoner.

Nays

Cunningham, Jackson, Johnston, R.F., Morin-Strom.

Ayes 6; nays 4.

The Chair: Are we ready to proceed with the vote on subsection 9(1), as amended?

Mr Morin-Strom: I just want to express our serious concerns with this section. This is one of

the most critical sections of the whole bill, perhaps the most critical section of the whole bill, because in fact the government has shown that it has no real intention of pursuing the other two options.

The only option in which the government has shown any serious interest is a government-run plan. This is the section that is going to give unprecedented power to the government, in particular to the cabinet, to be able to make arbitrary changes in almost any area of the pension plan without any consultation with the teachers, the Ontario Teachers' Federation or the member federations, and without even coming back to the Legislature.

Previously, the kind of changes that would be allowed here would have required the government to come back to the Legislature to pass new legislation. The vast majority of the sections of this bill, more than 100 sections, are in schedule 1, and this section is the operative one which is going to give the cabinet the right to go and change any one of those it wants, without any consultation with either the teachers or the Legislature. I think that it is a very, very bad precedent for us as a Legislature to relinquish that kind of power as elected members and hand it over to the Lieutenant Governor in Council.

The Chair: I think if you look at the amendment that accompanied this that Mr. Conway presented, at least part of your concern regarding the teachers' federations would be allayed, but maybe you do not agree with me.

Mr R. F. Johnston: I know the chair has no opinions in these matters.

The Chair: I do not have definite opinions, but I am looking at it, and trying again to be logical. But there are some concerns allayed here.

Mr Jackson: By definition, does that make our comments illogical? I would prefer the chair would just help facilitate the process. You are being very helpful.

The Chair: Thank you, Mr. Jackson. You have told me several times how I should chair these meetings, and I am doing it my way.

Mr Jackson: That is abundantly clear.

The Chair: As I understand it, we have now finished subsection 9(1), but we still have not—Mr. Johnston, I am sorry.

Mr R. F. Johnston: About my invisible hand—

The Chair: Mr. Johnston, I am sorry. You have been away.

1640

Mr R. F. Johnston: Yes, I have been away. I have lost some weight, but nothing that substantial, I had not thought.

I just wanted to add a few comments. Having watched you now on TV recently and having followed this through that meeting and through a bit of the Hansard that has trickled my way one way or another, I want to say that I agree with my colleague who has done such a great job carrying this bill for us in terms of our critique of it.

I find it very strange that the government at once proffers three proposals and even says today that it expects to have some kind of shared fund with a real partnership at some point and this option is not too far away, uses that kind of language and still brings before us today a section like this subsection 9(1) which is, in my view, so draconian and so one-sided.

There are three things that come to me out of this. One is the matter which Mr Morin-Strom has raised, and that is the notion of accountability to the House. What has been taken out of here are any of the notions of pension plans that are held in some ways in trust by the government in unilateral fashion and to require a legislative change and major substantive input of the Assembly before anything can happen to them.

We heard from counsel to the minister a few minutes ago that, even with his amendment taking away the ability to rescind, such substantial changes could still be made to this unilaterally that, to all intents and purposes, they could almost equate to the rescinding of the plan. Yet there is nothing in this section, or anywhere I can see, that requires that to come back before the Legislature.

It seems to me that is a very profound power to be placed in the hands of the executive council and out of the control of members of the Legislature who are, in my view as an 11-year veteran here, now seeing fewer and fewer powers and having more and more curtailment of individual members' effect on legislation. That would be the first thing I would say.

The second is that I do not know how you can expect the teachers to actually believe that your real goal is anything but this kind of unilateral power-tripping and that you really do want some sort of shared power when you leave this kind of section as it is with no indication in it at all of co-operation.

The chair brings our attention to the not-yet-tabled amendment to the new subsection that we brought in, and you have to notice that is a notice provision. That is not a consultation provision,

that is not any kind of recognition of interplay with the teachers on these matters. All it does is say that you cannot move in this draconian fashion in three days' time. You now will have to give 45 days of notice to people.

That is not exactly a message to the teachers that you are serious about moving towards a shared plan unless—and this is my third point, and I would like to have some answer from the minister on this matter—you are using this as some kind of negotiating hammer. Are you keeping this kind of hard-headed language in here as very strong power to the executive council because you want the teachers to know that you are deadly serious, that the only way they can come to a shared plan with you is if they buy your notions around arbitration and mediation and that there is no room for them to be able to hold to their benefits? In other words, is this in fact your using the real hard-nosed approach to try to bring them to their knees and to bring them into your notion of what a shared plan should be?

Hon Mr Conway: I would add only one point, because I do not think I can allay all of the concerns that have been identified: People will see what they want to see and perceive what they perceive, as I will, and that is the joy of humankind. I would only make the point that, in providing for the amending formula that we have, I think there is a real benefit in terms of—and remember what kinds of things that, in many respects, we are talking about here—administrative efficiency that I think will very significantly benefit plan members.

Staff who have had an association with the commission can cite, as can others, cases that have been highlighted by the Ombudsman. There have been some very interesting cases cited where, because the language of the legislation was imprecise, unclear, that change could not be made apart from the Legislature, and the queue for that forms around the corner.

There was the added protection, I will admit, that without legislative intervention there could not be change. That is quite strict and it provides a real safety, I suppose, for some who really worry about how a cabinet might behave.

On the other hand, I think you can make a better argument that by providing for this kind of formula, there is a much more speedy mechanism to address a lot of the issues that routinely have to be dealt with.

Mr R. F. Johnston: For the sake of efficiency we see many democratic institutions being waylaid these days, in my view, and democracy was never supposed to be especially efficient. It

was just supposed to be fair and take into account the various players' perspectives on things.

I remind the minister that our spokesperson introduced an amendment here which brought forward a two-sided kind of approach to this, that if you could come to agreement with the Ontario Teachers' Federation on doing any number of these things that are necessary for the easy administration and easily agreed to kinds of changes that there should be to the plan, then that would be set out, that the OTF was brought into that kind of notion, and if you could not, then you came back here.

It strikes me that even if you are not going to a totally equal partnership, that at least is a message to the teachers that you are taking them seriously in terms of the administrative ease, if you can put it that way, the easy things that need to be done to make a plan adjust and evolve. I wonder why you did not make some kind of move in that direction, because none of the wording here, of course, even mentions the existence of the teachers' federations, let alone the assembly.

Hon Mr Conway: That is dealt with in later sections where other possibilities are contemplated.

Mr R. F. Johnston: It is hard to see the mirrors for the smoke.

The Chair: I think we have had a lot of discussion. In some cases, I am not sure that we have been discussing any one thing or any one section or clause; we have been talking about a lot of concepts. I would like to try to focus us back, if I may, to the addition.

Mr R. F. Johnston: Are you asking exactly what parts of subsection 9(1) I was talking to?

The Chair: I would like to go to clause 9(1)(a), the addition that was read by Mr Conway.

Mr Morin-Strom: We have subsection 9(1) on the table. I think we should come to a resolution unless we are going to postpone it.

The Chair: Mr Decker keeps insisting that where we are is that we have carried clauses 9(1)(a), (b), (c), (d) and (e) and that we are now at the addition. That is what our clerk—

Mr Jackson: Then clearly you should have ruled the last speech out of order 20 minutes ago.

The Chair: Subsection 9(1) has been carried.

Mr Jackson: No, it has not.

The Chair: As amended.

Mr Jackson: We passed the amendment; then you call, traditionally, "Should subsection 9(1) be passed?"

The Chair: We have a disagreement.

Mr Jackson: That is the procedure.

The Chair: I guess we will take the vote over again because the clerk is saying one thing to me and you are saying something else.

Mr Jackson: Let me put it to you this way: Since you ruled that my amendment to strike out the section was unacceptable—

The Chair: Right.

Mr Jackson: —have we had any votes?

The Chair: No.

Mr Jackson: You ruled that it was out of order. You could have simply said that we have already passed the section. Is that not that what you are now telling us?

The Chair: I have not said that we have passed the section. I have said we have passed subsection 9(1).

Mr Jackson: I am trying to help you get out of this mess.

The Chair: I think it is helping the whole committee if we all try to be co-operative. I am hearing various things from various people. I would suggest the clerk likely has the answer since he seems to be the most experienced person here who does this kind of thing, but if you want to continue to talk around these issues, you can.

Mr R. F. Johnston: If I might, just before we put the clerk in that kind of position, I understand how he could come to that kind of decision, in that it would appear that what the minister has done is to replace the present line 1 with something else in his amendment. However, that does not preclude the possibility of further amendment to subsection 9(1).

What Mr Morin-Strom was trying to say quite some time ago is that we had considered the minister's amendment to be the first amendment, if I can put it that way, to that section, in that we had not taken the vote on subsection 9(1). I think at this stage it might not be a bad idea, unless there is other discussion or amendments, for us to have a vote on subsection 9(1).

1650

The Chair: Okay. I think I have finally got it, Mr Johnston. Do we have any further amendments on subsection 9(1)?

Mr Jackson: No.

The Chair: Okay. Well then, I think we will take a vote on subsection 9(1) as amended.

Mr Jackson: I have not commented on subsection 9(1), which is my right, and I wish to make a few comments.

The Chair: Please do that.

Mr Jackson: I cannot support this section even though you have overruled my amendment. As I have stated both last Wednesday and to the minister privately and again earlier today, I find this action by the government represents a removal of certain rights that have been enjoyed under the current plans. I consider offensive and inappropriate the manner in which that was introduced into our discussions here at this table.

It has now been clarified that at no point have there been any discussions with the teachers' federation about a government-run plan, let alone concurrence with any sections contained therein. That was confirmed by the minister last Wednesday night. I am now even further distressed that since it has been tabled, as of last Wednesday, there have been no subsequent discussions. It appears that in the process of approving this bill we are seeing the conduct of the government as to how it will operate once the bill is approved this week.

I might remind members that the 10.9 per cent cap has now been removed because the joint option has been removed by the government. Therefore, there is no cap in terms of what this government could force the pension plan participants to pay.

I think we are saying that we are not interested in all the positive negotiations and discussions which have occurred for the last year and a half, that all of that has been for naught and that we are even going to regress to a point many, many years prior to the time that this bill was first implemented.

I think it is a case of bad-faith bargaining. I have indicated that to the minister and I believe this was the intention of the government all along. I am rather disappointed that as committee members we have spent this kind of time and effort simply to have the government-run plan railroaded through at the 11th hour. I am quite offended by the process. I accept it for what it is, but I will not support the approach taken in this amendment.

The Chair: Are there any further comments on this particular section? Mr Keyes.

Mr Keyes: Only to kind of refute Mr Jackson's statement, to show how illogical it is in my opinion. We were all distributed, on the very first day, with this booklet which showed the government's intent. It has three options spelled out very clearly for governance—(c), (d) and (e)—and every member of the committee had this. This showed the type of amendments that were

necessary under any one of the three governance options.

If all members had read them thoroughly they would see that each, no matter in which direction you went, required different amendments. It was spelled out very clearly. We tried our best to say the matter of governance should be left until such time as all of those other issues—there are only about three clauses that relate to governance out of 116. We should have worked with those to see whether or not there was any further movement on anyone's part with regard to governance.

But when the minister was pressed to the point of saying, "How can we proceed?" there only was one way we could proceed, and that was with the model of government sponsorship. There was no alternative explained well by the minister on our first day. Therefore, we are now proceeding with the amendments as necessitated by that option.

It has always been our intent, very clearly spelled out in here, to have all three, and partnership was our preferred option. Therefore, what we are doing now is coming down on what is necessary by virtue of the direction we have taken. That is why I cannot agree that we were not sincere in our intent to have those three options there right from the very beginning.

Mr Jackson: A brief response: I read the document, I was aware of the contents of the document, but the Liberals came to this table last week clearly refusing to indicate what the preferred option was. They were insisting on proceeding with clause-by-clause without making a declaration of the preferred option and without tabling all of their amendments.

The minister himself hung Mr Reycraft out to dry during those hearings when Mr Reycraft said, "Well, I do not think we are quite ready to proceed." Then, after we refused to proceed, 20 minutes later magically the amendments appeared.

I will stand by my statements as Hansard has accurately recorded the events of how this bill unfolded and the manner in which this government treated teachers. Those are all matters of record. If you are having difficulty, if they have kept you in the dark as to what the plans were from cabinet, that is your problem, but I have no difficulty in interpreting what exactly has been going on here. I doubt seriously whether a single teacher in this province has missed what this government has done to him or her.

The Chair: Any further comments, questions or discussion? I think then we are ready for the vote on subsection 9(1) as amended.

Mr Jackson: Recorded.

The Chair: Recorded vote.

The committee divided on whether subsection 9(1), as amended, should stand as part of the bill, which was agreed to on the following vote:

Ayes

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Nays

Jackson, Johnston, R. F., Morin-Strom.

Ayes 6; nays 3.

The Chair: I have before me another amendment, subsection 9(1a), which I understand from the clerk, to clarify the bill when it would be finally printed, would be 9(2). It would come out as 9(2) and 9(2) and 9(3) would become 9(3) and 9(4), simply because we have the letters in subsection 9(1) as part of that section and subsections.

We have had this already read. I would therefore ask that it not be done again and that we now look at this and discuss it at this moment if possible.

Hon Mr Conway: It is almost self-explanatory. The amendment seeks to ensure that there is a notice period, that no amendment could be made without the Ontario Teachers' Federation and each of its affiliates receiving a 45-day notice of the intended amendment.

Mr R. F. Johnston: I would like to offer an amendment to the minister's amendment

The Chair: Mr Johnston moves that the minister's amendment be amended to read as follows:

"(1a) Before making an order amending the pension plan, the Lieutenant Governor in Council shall give the Ontario Teachers' Federation and each of its affiliates 120 days' notice of the amendment and the minister shall consult with the Ontario Teachers' Federation and each of its affiliates during that period concerning the amendment."

Any comments on this amendment to the amendment?

Mr Johnston, do you want to speak to it?

Mr R. F. Johnston: I would love to.

The Chair: How long? Is this a speech or comments?

Mr R. F. Johnston: Well, it will be a short comment which may turn into a speech.

The Chair: I kind of thought it might.

Mr R. F. Johnston: I think, as I was saying about the previous section just passed, that there is no indication here at all of any inclination to enshrine in law the notion of consultation, let alone the notion of shared power.

It seems to me that at this very stage, where the minister is obviously trying make some kind of gesture of notification by putting in a 45-day period, that in point of fact that is not much help to anybody.

If we look at this as something which is a minor change and easily accommodated, then 45 days may be a sufficient length of time for people in the OTF to talk to their individual members and the affiliates to gather and discuss the matter and decide what they think about it.

1700

It would strike me, though, that if it is at all controversial, a longer period of time would make sense. If it were some matter that is easily resolved, then having a 120-day period is not a problem because you can easily backdate the effectiveness of the particular matter so that it would not preclude any kind of action.

Besides adding the time, from 45 days to 120 days, the second part would also require consultation about the matter between the minister and the OTF and the affiliates. Again, on a small matter that might just be a phone call where nothing really of substance takes place. Maybe you would want a second amendment after this—this was very quickly done—if you agreed to this kind of motion, which would allow the parties, on mutual agreement, to waive the 120-day period so that it could be done more quickly. But it at least would put into this law, right after this section which is so strong in terms of the powers of the government, some kind of notion of obligated communication between the minister and the parties that represent the people affected by any kind of change.

Again, this is a very quick amendment to an amendment which we have only just seen. But if the notion is acceptable, then the time and the wording are something which obviously we are very happy to accommodate.

Hon Mr Conway: I have listened carefully and thought seriously about this over the last couple of days and I cannot agree with my friend on a couple of points. I would draw your attention to the fact that in current legislation—that is, legislation apart from Bill 66—this consultation is a convention; it is not legislated.

Mr Morin-Strom: That is after the fact.

Hon Mr Conway: I tell you there would be a lot of people who would look at this plan over the

years and say consultations appear to have been quite productive, not absolutely perfect, but a lot of people would, I think, look to the success of this plan, particularly from the point of view of both sides, from the members' point of view and from the government's point of view, and say, "Not perfect, but not bad, not bad at all." So I would not favour incorporating in legislative language the consultation.

I would rather not go to the 120 days simply because I think the 45 days provides adequate notice and would give the kind of flexibility that I certainly would want and that I think any member of the Legislature would want, should she or he find herself or himself in the position of having to respond to a number of the issues that one can imagine developing, particularly trying to relieve some of the pressure around individual cases. So I would not accept my friend's amendment to the amendment or the argument informing it, though I can appreciate his point of view.

Mr R. F. Johnston: I have a real difficulty with this kind of notion. If one says that in fact the convention has been good and that there has been consultation that, at least in the minister's eyes, has been appropriate, then why not put it into law, why not say, "By God, that consultation is a good thing"? Let's say so right here in the section which basically gives us unilateral powers to do whatever the hell we want to this thing. That might be a gesture of good faith and a statement about how we really feel about the consultation, which would belie what subsection 9(1) actually says.

If you are saying consultation is a good thing, then let's constitutionalize it, as they say. Let us put it down here in writing and say that is what you want to do. In terms of the 120-day period, the easiest way to deal with that is to put in a waiting agreement. If both parties agree that this kind of waiting period is unnecessary to bring somebody relief in terms of a particular benefit which is not accruing to him as all parties would want it to, then heck, give them the chance to say, "We can consider the 120 days unnecessary and let's agree to it."

But I think you are sending out a very interesting message here today to the teachers' federations. You are basically saying that, "Hardball is the way we're going to bring you around, and if you ever want to have a shared plan, you will have it on my terms." This is a clear indication that this is where you are going.

Mr Jackson: I have a quick question for the clerk. Do we have Instant Hansard from last Wednesday?

Clerk of the Committee: No.

Mr Jackson: When will that be ready? By Thursday night, I presume.

The reason I ask that, Minister, is that you made several references around this issue of consultation last Wednesday. Now, last Wednesday was a significant day regarding this bill. Last Wednesday was the day you were unable to go to your office because, had you done that, you would have been forced to consult with teachers who had desperately pleaded with you to engage in a meaningful meeting that had the pensions as the agenda item, not your regular routine annual meeting at which point you talk about everything from the three Rs to reduced funding.

But what concerns me is that you carefully and clearly used language last Wednesday which talked about your hope for engaging the federations in dialogue. By your own language, you are stating that you want them to come in and talk to you about modifying the plan that we are about to approve because hopefully this will not be hanging around very long and we will be moving to a new joint model.

You are not that happy with this model; it is the one you will accept. You would prefer the joint partnership model. You are only going to achieve that through consultation, and yet you refuse to put in the language of a bill the very thing you have publicly stated, which you did on Wednesday, and I guess you are not prepared to recant today.

I am at a complete and absolute loss as to what is frightening you or what is frightening a future Minister of Education of this province in terms of your ability to consult with the beneficiaries of this plan, the people who have paid for this plan. That is all we are asking for here, for you to consult and to acknowledge that you have a responsibility to consult.

I would like to know why you can, on one hand, suggest that we will move from this legislation to something better and you will consult in that process and then when handed an opportunity in the bill you refuse to accept it.

Hon Mr Conway: I would only add that I expect consultation will occur in the future, as it has in the past.

Mr Jackson: I would like to pursue that point. That really concerns me, that point of the minister's ability to consult up to today on this issue. If he says he is going to consult in the future in this fashion that he has since he became minister on this issue up until today, then there is serious concern. I have a letter from the minister dated 1 December 1989. He indicates that he is

willing to meet under any circumstances and yet when asked to do so he has been unwilling and unable to.

It is abundantly clear that the minister refuses to consult and that is why he is objecting to this amendment. Therefore, I am prepared to vote for the amendment and watch the government vote against it to protect the Minister of Education. I leave it at that.

Mr R. F. Johnston: If only he had consulted with even the teachers on the committee about this before he introduced this. Is this not an indication that we need to put it into law, Mr Elliot?

Mr Elliot: The question has not been asked of me; it has been asked of the minister.

Mr Jackson: Well, did the minister consult with members of the committee who are beneficiaries of this plan with respect to its implementation?

Hon Mr Conway: I listen carefully and consult widely; surely you know that to be my hallmark.

The Chair: We have an amendment to the amendment here. There does not seem to be a lot more in the way of questions coming forward.

1710

Those who are for the amendment to the amendment as presented by Mr Johnston? Are you asking for a recorded vote? Did I hear that?

Mr Jackson: A recorded vote, yes.

The committee divided on Mr R. F. Johnston's amendment to the amendment, which was negatived on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: We are still dealing with the amendment, as presented by Mr Conway, that deals with 45 days' notice of the amendment. Are we ready to vote on this subsection? Those who are for this subsection? Same vote. It is not recorded? Okay. The ayes seem to have it, as the Speaker says.

Motion agreed to.

The Chair: I have no amendments before me for subsections 2 or 3. May I consider subsections 2 and 3 carried?

Mr Morin-Strom: I have a question with regard to subsection 3. I would like to ask why

the minister does not want the Regulations Act to apply to a cabinet order amending the pension plan. It seems to me that it might be a good idea to classify this as a cabinet regulation and that the Regulations Act should apply, the provisions in it in terms of notice and the fact that the regulation would have to come before the cabinet committee on regulations.

That may appear to the cabinet to be an automatic procedure, but there are some checks and balances in terms of regulations and in terms of checking whether, for example, changes may violate the Charter of Rights and Freedoms or violate other legislation that is in place. I just do not understand why the minister does not want the Regulations Act to apply.

Hon Mr Conway: Just a couple of things: First of all, the amendments would effectively be orders in council, and the Regulations Act does not apply, in the normal course of events, to orders in council.

The previous amendment that was carried providing for the notice period, however, builds in the protection that I think ought to be there to serve notice to the community that a change or an amendment is contemplated.

The other point, about which John Burton was just reminding me—John, do you want to make the point about the regulations as previously considered?

Ms Skelton: I can do that.

Hon Mr Conway: Yes, Janet.

Ms Skelton: The regulation provision was originally put into the legislation because it was contemplated that the governance option would be in a regulation rather than in the schedule. Now that it has been found possible to put them into the schedule, and therefore integrate them with the plan, the regulations provision was not considered necessary.

The Chair: That is the answer to that question.

Mr Morin-Strom: It does not really answer why—well, maybe legally. What difference does it make in terms of being under the Regulations Act versus not being under the Regulations Act? Is it a substantive difference or not?

The Chair: Do you want to let Mr Johnston try to clarify again? He was quite successful the last time.

Mr R. F. Johnston: I understood that perfectly.

The Chair: I mean you clarified it in my head.

Mr R. F. Johnston: What he was basically asking is, there are reasons why we have the

Regulations Act and there are certain kinds of protections and procedures for regulations, part of which is notification. I agree with that. Then there is a whole series of other things.

What is lost? Can you tell us if there is anything which is lost to the access that the public gets, or whatever, to the regulatory process by this being done just within the schedule within the act rather than being covered under the Regulations Act?

Are there things in process which are now not going to be available as a result of that? That would be interesting to know. I do not know the answer to that myself. I usually do not like to ask questions I do not know the answer to.

Hon Mr Conway: John Burton, did you hear that question? What is lost by not having the Regulations Act apply in this situation? Is there anything lost to the public by virtue of the Regulations Act not applying?

Mr Burton: Well, the difference in process is that they do not need to go through the regulations committee of cabinet.

Mr R. F. Johnston: Or now the Legislature either. We now have a committee of the Legislature that deals with this. And they are not gazetted.

Mr Burton: They are not gazetted. However, under the scheme under subsection 9(1) they are made known to teachers 45 days before they are contemplated.

Second, the Pension Benefits Act requires notification of teachers, certainly of any amendments which might be considered detrimental to the teachers. So, those protections having been built in, to publish them as regulations would, in some sense, remove some of the flexibility that section 9 was designed to achieve to enable changes to be made more quickly.

Hon Mr Conway: I would like Janet Skelton speak to that as well on that last point of view.

Ms Skelton: From a technical point of view, a pension plan is an extremely complex piece of legislation for anyone to work with. As soon as you begin to work with changes made in regulations as well as changes in an act, you suddenly have your provisions in two different places and people have to thread their way back through them to find out what happens. What we were attempting to achieve with the schedule and an order-in-council amending process was to keep the whole thing integrated so that somebody could understand it without going through all the threads.

Mr R. F. Johnston: I understand that under the present act which covers the teachers' pensions changes are made by regulation, or are they not?

Ms Skelton: Some are changed by legislation, some by regulation.

Mr R. F. Johnston: So basically that is now being lost. If I am wrong, the minister, or perhaps the clerk even, can help with this. With the changes we are now making to the committee system and trying to get the committee to be looking at the regulations process more regularly, this also effectively now takes again out of the hands of the Legislature any ability to grab a hold of controversial changes which might be brought forward in the old days under regulation, not through legislation, but now would be brought through, just under the pension act, as a schedule change. They would not be able to be looked at by a committee of the Legislature.

Hon Mr Conway: Again, I just come back to the point that was made earlier, particularly Janet's last point, that when you look at what it is that has to be administered, there are so many cases or there are a number of cases where the past administrative structures are not something that you would want to leave as they were.

One of the reasons we are making some of these changes is that a lot of people, including the Ombudsman and others, have pointed out that this is not as efficient. I know when you mention the word "efficiency" there is the concern my friend the member for Scarborough West raised, that democracy is not always expected to be the most efficient operation. I accept that, but I will tell you the amount of mail that I receive, that members receive, the number of people standing by waiting for things to be changed that you would want to change. They just sit there and they wait.

We have got some cases that are quite frankly embarrassing. There was the case not too long ago about paying out refunds. People waited for what, two years?

Ms Skelton: Just about.

Hon Mr Conway: Just about two years before we could pay out refunds. There was no dispute about paying out the refund, at least I do not think there was a dispute, but there was an impediment to an efficient payment of the refund.

Mr R. F. Johnston: I do not think we should attack the Regulations Act as being too inefficient or we might get a lot of other bills in trouble. I would just say that is what we are talking about here. What I worry about, as I look

at the new processes for the House here, is that again this is another means of taking away from the assembly any kind of say about this, given what we have just seen in subsection 9(1). I just register my concern about that again, that we replace something supposedly for the sake of efficiency. That is great if it is noncontroversial, as you are saying, if it is about a repayment to people for some injustice in the past, but if it is something that is controversial and would rightfully, under a normal regulations process, be brought before that committee because it requested to look at that, as a request say from the Ontario Teachers' Federation or others, then that now is not possible by this change to the act. I think that is something of which members should be aware and it is not necessarily a good thing.

The Chair: Mr Johnston, you did mention the clerk may be helpful in this.

Mr R. F. Johnston: I knew he would be.

The Chair: I would like to read you what his assessment is of the standing committee on regulations and private bills, "It does not examine regulations per se or the policy per se but rather the manner in which regulations are made and their consistency with certain principles, such as ambiguity of language, and do not impose a fine or imprisonment and other like principles."

Mr R. F. Johnston: That is always the way, by the way, the committee has been able to deal with specific matters, is to take the second half of what you just read—concerns about ambiguity, etc—and then using that test, look at certain changes. That possibility—again, looking at an example for reasons of a principle involved—would now not be possible under this change, as I see it.

Also, we are seeing an evolution of the role of that committee. I think the clerk will agree with that, and who knows, in the future it may or may not decide to take into its hands a whole series of regulations and examine them much as we are now going to do with the estimates for various ministries, select only a few but go into them in some depth and look at them. That would not be possible if that kind of change takes place.

1720

The Chair: The schedule, being part of this bill, is different and makes it more complex, I am sure. We already have over 50 amendments to this schedule in front of us, so it is certainly going to have lots of airing here at this particular sitting at least. In any case that was a question you wanted.

I also have another New Democratic Party motion that would add another subsection to this bill. Would you like to speak to that now, Mr. Morin-Strom? I will take subsections 2 and 3 if you would like. Can I consider subsections 2 and 3 carried? Carried.

Now perhaps you would place what you would add as subsection 9(4).

Mr. Morin-Strom moves that section 9 of the bill be amended by adding thereto the following subsection:

"(4) The minister shall lay an order made under subsection 9(1) before the assembly if it is in session, or if not, at the next session."

Mr Morin-Strom: I think there should be a notice provision to the Legislative Assembly where the cabinet is taking upon itself tremendous powers in this section. I think there should be a vehicle for it to come before the assembly in some fashion so that the assembly, and in particular some committee of the assembly, can have the opportunity to address the change if it is substantive in nature and of concern to members of the Legislature.

The Chair: Are you qualifying, though, that it be substantive?

Mr Morin-Strom: I am saying a committee can look at it. If it is a routine change it will not have to address it, but if it is significant it does give a vehicle for a committee to look at what may be certainly tremendous powers here for the Lieutenant Governor in Council to make significant changes to the legislation.

The Chair: Is the minister ready to comment on this?

Hon Mr Conway: I am always happy to accommodate. I have no problems.

Mr R. F. Johnston: Can I ask a question of the minister then since he has all of a sudden become so amenable.

Hon Mr Conway: I am listening to what you say. I have no difficulty in trying to accommodate in every reasonable way I can. What I cannot easily cope with is that if you imagine the worst motives of the most self-destructive executive council, then I cannot help you.

Mr R. F. Johnston: The verdict is not in on that one.

Mr Morin-Strom: But you have seen that. You were in opposition once. You remember what they are like.

Mr R. F. Johnston: I want to ask a question about this.

The Chair You were not asking.

Mr R. F. Johnston: No, I was starting to and then I got my answer before I asked it, which was not the question I was going to ask. Mr. Morin-Strom has said that the order should be laid before the House. Am I presuming then that this would take place after the 45-day period or would this take place before the 45-day period?

Hon Mr Conway: I am accepting the amendment.

Mr R. F. Johnston: You are accepting it because you are presuming it is a fait accompli rather than something which is part of that 45-day process.

Hon Mr Conway: No. Let me say this to you: Do you think, for example, that if—remember what we passed back here. Where is subsection 9(1a)?

“Before making an order amending the pension plan, the Lieutenant Governor in Council shall give the Ontario Teachers’ Federation and each of its affiliates 45 days’ notice of the amendment.”

In the real world of our beloved Ontario, do you suppose members of the Legislature will not be apprised of what is going on?

Mr R. F. Johnston: I am sure they will, but if members of the Legislature who are thus apprised a day or so after you have done the dirty deed, whatever the dirty deed might be, are not able to deal with it at all until after the deed has become a deed rather than when it is a potential amendment, then that is a different matter, is it not? Coming before a committee when an amendment is already an amendment rather than when it is a proposed amendment is a very different matter and process.

Hon Mr Conway: If you are speaking against your own amendment, I can only tell you that I accept the amendment as presented.

Mr R. F. Johnston: And you would not accept one that was tied to the notice of motion given to the—

Hon Mr Conway: I do not think it is necessary.

Mr R. F. Johnston: I thought that was it. I just wanted a clarification of where you were. I thought that is where you were.

Motion agreed to.

The Chair: I do not have before me, as I can see them at the present time, any further amendments to section 9 or any of its subsections, so shall I consider section 9, as amended, carried?

Mr R. F. Johnston: We need a vote and a recorded vote.

The committee divided on whether section 9, as amended, should remain as part of the bill, which was agreed to on the following vote:

Ayes

Conway, Elliot, Fawcett, Keyes, Stoner.

Nays

Jackson, Johnston, R. F., Morin-Strom.

Ayes 5; nays 3.

Section 10:

The Chair: Now we are at subsection 10(1). I have before me one amendment at the present moment on section 10 and it comes from the NDP. I presume, Mr Morin-Strom, you would like—

Hon Mr Conway: I think there is a government amendment here.

The Chair: Oh, yes. I have subsection 10(1), subsection 10(2) and then I have a whole one from Mr Jackson that section 10 be amended. I am trying to take them in order, if I can. I made a considered opinion and it has now been affirmed by a couple of people that I have done it correctly. I am going to do subsection 10(1) first, Mr Morin-Strom’s motion, and then I think we will go to Mr Jackson’s motion.

Mr Morin-Strom moves that subsection 10(1) of the bill be struck out and the following substituted therefor:

“(1) The Lieutenant Governor in Council and the Ontario Teachers’ Federation may enter into agreements that provide for, but are not limited to,

“(a) the joint management of the pension plan by the crown and the Ontario Teachers’ Federation;

“(b) the sharing of liability for deficiencies in the pension fund that arise after 1 January 1990 by the crown, the employers who contribute under the plan and the active plan members;

“(c) the application of actuarial gains that arise after 1 January 1990;

“(d) procedures for negotiations between the crown and the Ontario Teachers’ Federation concerning amendments to the pension plan;

“(e) procedures for the resolution of disputes between the crown and the Ontario Teacher’s Federation.”

Mr Morin-Strom: I think this is an improvement over the government’s recommendation because it takes away the possibility, as I interpret the government’s proposals, that the

Lieutenant Governor in Council may, by order, unilaterally take actions under subsection 10(1) that are not part of an agreement with the Ontario Teachers' Federation.

In particular, paragraph 10(1)(6) is a pretty wide-open statement at the end of the government's proposal, which I think is of concern. As well, our change specifies that it is the Ontario Teachers' Federation, as opposed to what might be vague in the government's language, talking about "representatives of the active plan members."

The Chair: Thank you for pointing out those differences to us, Mr Morin-Strom.

Hon Mr Conway: I do not think it will surprise anyone that the government would not favour this motion, for a variety of reasons and on a number of grounds, but principally, in clause 10(1)(b) for example, it focuses on—I just want to be clear.

1730

The Chair: We are awaiting the reasons.

Hon Mr Conway: In the bottom sections, clauses (d) and (e), the procedures for dispute resolution, I think I know what is intended.

Mr Morin-Strom: We would not want to do that.

Hon Mr Conway: It is silent on the surplus. I do not see—in clause (b), for example, there is a reference to deficit sharing. There is no indication—

Mr Jackson: You are going to love my amendments then.

Hon Mr Conway: I just think our section is a better section. The reference to "active plan members" is, I think, a more comprehensive phrase than "Ontario Teachers' Federation." For those and other reasons, I just would not favour this offering.

Mr Morin-Strom: Why would the minister want to preclude any future government or cabinet from reaching an agreement with the Ontario Teachers' Federation, an agreement that would include a procedure for the resolution of disputes?

Hon Mr Conway: Oh, no, I am not operating on the assumption that we are precluding a future agreement.

Mr Morin-Strom: You seem to be saying—

The Chair: Do you want to be specific about what you are saying, Mr Morin-Strom?

Mr Morin-Strom: The resolution of disputes seems to be a key issue. Why do you want to

preclude the possibility of finding some kind of mechanism to do that?

Hon Mr Conway: Because I certainly cannot imagine going beyond the mediation process that is referred to in—well, that is probably a little tighter than—I am simply not going to beat around the bush about where I stand on what I believe to be your view and the view of some others that we can have a partnership with dispute resolution that imagines some kind of independent third party out there making—

Mr Morin-Strom: I did not say that. It could be a coin toss.

Hon Mr Conway: Listen, it could be a lot of things.

Mr R. F. Johnston: You have to deal with what is before you. You have to stop dealing with these hallucinations.

Hon Mr Conway: But what is before me would make Mackenzie King smile. It is the Delphic oracle. It can mean a little or it can mean a lot. I think my section 10 is clearer.

Mr R. F. Johnston: It is not a dagger that you see before you. All you see here is a suggestion for a procedure for the resolution of disputes. It does not state what that is. It is "may enter into agreements." There is not an onus on you to accept any particular format. It is merely a matter of suggesting that this is not a bad motion to put forward, that a dispute solution might be a good thing.

Mr Jackson: It does not say binding arbitration.

Mr R. F. Johnston: I did not see that anywhere.

The Chair: I think Mr Conway understands what is before him. That is my judgement.

Mr R. F. Johnston: We are not sure he is not confused again.

The Chair: I am not sure he wants to comment any further. He seems to be indicating he does not. Are there any other comments or discussion? Are we ready for the vote on this amendment?

Mr Jackson: Recorded vote.

The committee divided on Mr Morin-Strom's motion, which was negatived on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

Mr R. F. Johnston: There seems to be a pattern developing.

The Chair: I am getting that, but we did have that little blimp a few minutes ago when we had a new amendment and we voted unanimously again.

Mr R. F. Johnston: I noticed that, a little blimp. My goodness, what a thing to say.

The Chair: I do not know, but we have had two unanimous votes on this committee today. Away we go.

Mr R. F. Johnston: I have a question for the minister on what is presently in the act, if I might.

The Chair: You would like to speak to?

Mr R. F. Johnston: Subsection 10(1).

The Chair: Let's deal with that before we deal with Mr Jackson's amendments.

Mr R. F. Johnston: Who may be a representative of a plan member?

The Chair: A representative of active plan members.

Mr R. F. Johnston: Yes.

Ms Skelton: If you were dealing with the whole of the pension plan, it would have to be the Ontario Teachers' Federation. There was, for instance, one brief that came before the committee that suggested a potential for an agreement by an affiliate or a combination of affiliates. If you put the OTF in the heading, it would not allow a future possibility of dealing with a separation of the pension plans.

There are also members of the plan who are not associated with the affiliates. How it would happen, I do not know, but there could be a potential in the future that a group of, say, private school people could do something different in relation to the plan than others. I am not suggesting that would happen. Talking to active plan members simply leaves more flexibility for what may happen in the future in a clause that is oriented to the future.

Mr R. F. Johnston: Have you had discussions with the federation about this change? I know I am not supposed to read things into things that are not there, unlike the minister, but I get a little nervous about language that may be seen to be taking away from the representative powers of a group such as the OTF, and may be a means of sowing dissent and division among our series of affiliates which have managed to come together fairly well around the matter of pensions.

I wonder about this language. With no definition in the definition section about who this

representative might be, this then starts to be, can a person say, "I want an individual lawyer to represent me rather than the OTF to represent my interests?" I do not understand exactly where this might end up.

At the other end of things, I can understand what you were saying about an affiliate choosing to want to represent its particular members in its own way and that is potentially dangerous enough, but I wonder whether this opens it up to other kinds of privatization, if I can put it that way, an individualization of representation.

Hon Mr Conway: Two things: The language that is before you in the government section 10, "representatives of active plan members." Janet, I think I am correct in saying that is the language that has been in all of our proposals throughout the piece.

I think it is also important to observe that later, in section 17, we are recognizing for the first time in a formal sense OTF's right to representation in pension matters, if I am correct, in a partnership arrangement. Heretofore there has not been, if I am correct, any formal recognition of the OTF's role in pension matters.

Mr Jackson: The board composition: Come on, the list goes on and on.

Hon Mr Conway: I am not blind to the convention and the practices that have built up. You are absolutely right, but in terms of a formal legal recognition this is the first time that has happened.

Mr R. F. Johnston: The language in the present act is of this sort?

Hon Mr Conway: The point I wanted to make was that what we have been circulating in terms of language, if I am correct, throughout all these discussions in the last number of months generally used the phrase "active plan members."

Mr R. F. Johnston: The present act talks about representatives of active plan members? How does it work?

Ms Skelton: No, the concept of membership is new to this act. Membership has come into the act because it is required under the Pension Benefits Act. Before, the concept related to "employed in education." Certainly there had not been anything contemplating either member-run or partnership in previous acts, so these kinds of provisions simply have not been there.

The Chair: I have your explanation now. I have before me a section 10 amendment that looks like a replacement amendment by Mr Jackson. Would you like to read it into the—

Mr Jackson: No, my amendment went a little further than the one the government has just turned down, so I do not hold out much hope.

The Chair: Okay, that is withdrawn.

Mr Jackson: It goes beyond to talk about disposition of surpluses and so on.

The Chair: I then have before me a government amendment.

Mr R. F. Johnston: To follow up on this matter, I do not want to appear too obtuse about this but I want to be clear. Why did we use the language in the notice amendment that was just passed of the “federation” and the “affiliates”? Why did we not use the language of “representatives” in that case?

The Chair: Have you got an explanation?

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Ms Skelton: We are recognizing in that case that the teachers have a formal structure out there in terms of a place to put it. If you put in “active plan members” in that instance, you would be mixed up on whether you have to send out 140,000 notices every time.

Mr R. F. Johnston: I am talking about the “representatives of active plan members,” which you are saying at the moment is primarily the OTF anyway. Then in your language that you use in subsection 9(1a), rather than using the language of “representatives of active plan members” you now mention specifically the OTF and each of its affiliates. If you want to admit to the possibility that some plan members are going to have representatives other than OTF and affiliates, then why is it not there?

Hon Mr Conway: They indicated earlier that the reason why some of this language is drafted the way it is. It is trying to contemplate a set of future possibilities. Some of the things one could imagine may never happen, but one likes to leave the possibility that if they do happen, they can be accommodated.

Mr Jackson: On that point, though, the future possibilities have always included statements by you that they will include discussions with OTF. The first opportunity to entrench that concept was in a preceding amendment which dealt with recognizing OTF, but now when we look at discussing what a future model might actually be and a mechanism to do that in section 10, all of a sudden you are unwilling to mention OTF specifically.

Nowhere in the bill are we getting an indication from your government that you will even consult and that OTF will be part of a final

joint management plan discussion. That is what is creating the uneasiness here. All we are left with is your verbals and not your commitments.

Hon Mr Conway: I just refer you to section 17 later in this bill to see that we do recognize OTF. I guess the point I would make is—

Mr Jackson: Under the current bill. You do not recognize them as part of the process involved in a future joint management of the plan. It is not specifically laid out. I do not know what the big reluctance on your part is to mention OTF, as has been included in my amendment and is included in the NDP amendment.

Hon Mr Conway: The language is not precluding it either. We just simply admit to the possibility that there is a group, and it is not a very large group, of active plan members that is not represented by the OTF.

Mr Jackson: The minister is painfully aware that when one is mentioned and another is not, it does not necessarily imply that they are included. That was part of the whole problem we had with the Meech Lake discussion on women’s rights. It is revisited here in the same context. I suspect that they must be mentioned and then you can indicate others, but by saying “with the representatives of active plan members” when there is no definition section describing that, it can be read and interpreted, and there is legal thought in that regard, that it specifically does not mention them.

The Chair: I do not know whether there is any further comment possible, but Mr Johnston will give it a try.

Mr R. F. Johnston: We can always find something. It is quite amazing that way.

The Chair: I have noticed that.

Mr R. F. Johnston: I guess I am struggling with this, and maybe for no reason: Who can determine who is a representative? Who determines that? Is there something that each federation has in terms of its pension plan that requires any retired teacher to say that that affiliate is his representative and then through the OTF it comes to the minister, for whatever reasons, or is it possible to foresee an individual hiring a lawyer and saying, “I do not wish X affiliate to be my representative; I wish so-and-so to be my representative and it is my right to do that, the act says that my representative has a right to try to come to agreement with the minister about these things, etc, on my behalf”?

The Chair: Is there any person of wisdom who could answer that question here?

Hon Mr Conway: I am going to defer to Janet and/or John.

The Chair: Janet or John, have you got the wisdom we need to answer this question?

Mr Burton: Section 17 of the bill speaks of the power of the Ontario Teachers' Federation to enter into agreements contemplated under section 10—that is in paragraph 2 of the section—so the bill as drafted is empowering the Ontario Teachers' Federation to act as the representative. I would not think that a court could hold that they are therefore excluded in some constitutional argument.

The Chair: Is that sufficient, Mr Johnston?

Mr R. F. Johnston: I was not—sorry, go ahead, Karl.

Mr Morin-Strom: So can I understand this to mean that that change in section 17 empowers the OTF to be the formal representative of all teachers when it comes to pension plan issues?

Mr Burton: It gives them that power, yes.

Mr Morin-Strom: So there is no doubt that someone else, some other organization or individual, could come forward and say, "I am a representative of some segment of the teaching population, or an individual member, and I can be termed the representative for this section, section 10"?

Mr Burton: They do not have a basis in this act as drafted for claiming that someone else could be that representative.

Mr R. F. Johnston: But the argument that was just given to us at the beginning of all this for why we had the language of "the representatives of active plan members" was that the possibility of others, other than the OTF, being those representatives was why you could not just say the OTF. Now I am hearing back that under section 17 the OTF is going to have the absolute right to declare itself as their representative.

The Chair: Ms Skelton, Mr Burton; who is going to try this?

Mr Burton: I guess I will try it one more time. The OTF is representing all plan members in this instance, not just members of the OTF. That is the reason the wording is used that they represent all plan members, to show that their constituency for pension matters is broader than it is for other matters.

Mr R. F. Johnston: I understand that argument, from what you have just said. Then why does section 10 read, "The Lieutenant Governor in Council may enter into an agreement with the representatives of active plan mem-

bers"? Why does it not there refer to the OTF, as it will, presumably, subsequently in section 17?

Mr Jackson: Let me give you an example.

The Chair: People are really trying on this one.

Mr Jackson: Can I offer an example?

The Chair: I have Mr Elliot down. I consider this a subquestion, I guess.

Mr Elliot: If I could make a comment on this—it is related to the concern on the table—Ms Skelton, when she answered this, in the way I interpret what she said, did not in any way bind anything other than the fact there might be future negotiations or something that would change it, and this leaves the door open to do that.

Those of us who have been active in pension affairs for a long time, Mr Johnston, would be very hesitant if anybody other than the OTF were the representatives there. My impression from my studying of the act to this point in time is that they are the representatives at the present time.

In that context, I think it is really important that people understand what active plan members are, because people like myself are not active plan members. It is based on those people who are making contributions to the plan, not those people who are receiving benefits from the plan. That is a very important distinction, and with due respect to Mr Jackson, I think in what you said a moment ago you may not be aware that that is defined in the act in section 1, which we have already passed.

That is a very important distinction. I was going to be a little bit facetious a moment ago and ask the minister if the member for Kingston and The Islands (Mr Keyes) actually was an active plan member. He is only active in the case that he is actually mobile tonight; he is not active from the point of view that he is contributing to the plan because he is a recipient of the plan. So I think that is a very important distinction and a lot of us who have worked in these matters for a long time feel very strongly that the OTF should be the single voice of all of the active plan members, as defined in the current bill in front of us.

Mr R. F. Johnston: Hear, hear. Splendid, but I do worry about the fact that our hearing is different. What I heard was actual specific mention about affiliates and other possibilities raised. That is why I think we need this clear. I do not understand this.

Ms Skelton: If you were going to make those kinds of changes, you would have to revisit section 17, which is in fact an amendment to the Teaching Profession Act. It would mean you

would go back to the Teaching Profession Act to move it back and not have to go back to a whole bunch of different sections.

Mr R. F. Johnston: So it could not be done under subsection 9(1), where we can do virtually anything but rescind?

Ms Skelton: You cannot change anything that is in the act itself under subsection 9(1); 9(1) only allows you to change schedule 1.

Mr R. F. Johnston: I see.

Mr Jackson: You have introduced the notion of private school teachers, but quite frankly, section 9 talks to the issue of who can be a member of the plan and that the cabinet controls the expansion of access to this pension plan.

That could include, for example, the current discussions around junior kindergarten and the potential to bring in early childhood education workers, not as teachers, but to include them for pension purposes. At the other end of the scale, we could be talking about rolling in community college-type pension plans and the implications to the overall plan if that is blended into the equation by virtue of the Ministry of Education broadening its responsibility under the general topic of lifelong learning.

There are any number of options which the government could consider which would further erode OTF's currently held position as being the official spokesperson or the group with whom the minister consults primarily when making major modifications to the plan.

The Chair: Any further comments on this particular—

Mr Jackson: I would like the minister to react to that. I mean, he does have the power to expand membership in this plan.

The Chair: He is free to do so or not.

Hon Mr Conway: I cannot really add to what John and Janet have said.

Mr Jackson: You just do not want to at this time.

Hon Mr Conway: I do not want to.

Mr Jackson: That is correct.

The Chair: So we have subsection 10(1) that we have been discussing. May I consider paragraphs 10(1)1 through 6 carried? Carried.

Then we have before us an amendment, a government motion.

Mr Conway moves that subsection 10(2) of the bill be struck out.

Any comments, questions or discussions on this particular amendment?

Hon Mr Conway: The reason for that has to simply do with the fact that the content of that has been moved up to subsection 9(1) and that in a partnership, which is what we are contemplating here, this would obviously be constrained by a partnership agreement.

The Chair: Any further comments, questions or discussions on this amendment to strike out subsection 10(2)?

Mr Morin-Strom: I thought that you cannot move to strike out a section. I thought that you just vote for or against a section.

The Chair: If it is a subsection, yes; not the whole section. So it is striking it out?

Mr Jackson: But it has not been moved, so how can you strike it out?

The Chair: He moved it.

Mr Jackson: He moved to strike it out. He did not move it in order to be able to strike it out was the point.

Mr Elliot: I have a question to the minister: At the point when the equal partnership is negotiated and being put in place, does this mean that there would have to be a substantial amendment to section 9, in fact a deletion and a reintroduction of subsection 9(2)?

Hon Mr Conway: No. If you look at subsection 10(3), if the cabinet "enters into an agreement as described in subsection 1, the agreement may provide that the"—cabinet—"shall exercise the powers set out in section 9 of this act in accordance with the terms of the agreement."

The Chair: Did you want further explanation, Mr Elliot?

Mr Elliot: So the flow to an equal partnership would not be too onerous, or substantial amendment to what we are doing here would not be necessary?

Hon Mr Conway: No, not in the act.

The Chair: Any further discussion on the removal of this subsection? Those who are for the removal of subsection 10(2)? Mr Conway, Mr Keyes, Mr Elliot, Mrs Fawcett, Mrs Stoner.

Those who are against, or is everybody for removing? I have not got a vote from this side of the room.

Mr Morin-Strom: Are we casting voice votes?

Mr R. F. Johnston: Was there a call for a recorded vote?

The Chair: No, I am sorry; I did that.

Motion agreed to.

The Chair: Now may I consider subsection 10(3) carried, as has been explained by the minister? Any comments? May I consider subsection 10(3) carried? Carried.

May I consider section 10 carried? That of course is subsections 1 and 3 as presented and subsection 2 removed. May I consider that carried?

Hon Mr Conway: Carried.

Mr Jackson: No.

Mr Morin-Strom: Recorded vote?

The Chair: Do you want a recorded vote now?

The committee divided on section 10, as amended, which was agreed to on the following vote:

Ayes

Conway, Elliot, Fawcett, Keyes, Stoner.

Nays

Jackson, Johnston, R. F., Morin-Strom.

Ayes 5; nays 3.

The Chair: It is two minutes to six. I do have an amendment, a government motion, regarding section 11. Do you want to begin that at seven o'clock?

Mr Jackson: Yes.

The Chair: Okay, then I will declare that this particular committee is adjourned until seven o'clock.

The committee recessed at 1800.

EVENING SITTING

The committee resumed at 1905 in room 151.

The Chair: We are considering clause-by-clause of Bill 66. We are now, as I see it, beginning the discussion on section 11.

Section 11:

Hon Mr Conway: I have an amendment.

The Chair: Section 11, at the moment, has two amendments placed before me. Mr Conway is going to place the first amendment, which is before you, for section 11 to be struck out and a substitution made.

Mr Conway moves that section 11 be struck out and the following substituted therefor:

"11. The Lieutenant Governor in Council, by order, shall repeal schedule 1 upon the crown entering into an agreement with the representatives of members of the pension plan that provides,

"(a) that the pension plan will continue;

"(b) that the entitlement to surplus and the liability for deficiencies in the pension fund is permanently assumed by the active plan members;

"(c) that the liability of the crown to contribute under the plan is limited to a specified amount or to a specified percentage of member contributions under the plan;

"(d) that the members may amend the plan, subject to the restrictions described in clauses (b) and (c)."

Comments, questions or discussion on the section 11 amendment moved by Mr Conway?

Mr Morin-Strom: How does my amendment fit into here?

The Chair: Your amendment will be after this. It has "11(1)" after it.

Mr Morin-Strom: I see. We do not do it as an amendment to the amendment. We can do that separately.

The Chair: We can do it that way, if you would prefer. Okay. Do you want to use it as an amendment to the amendment?

Mr Morin-Strom: I will read the whole motion.

The Chair: You may place it.

Mr Morin-Strom moves that subsection 11(1) of the bill be struck out and the following substituted therefor:

"(1) Schedule 1 is repealed upon the Lieutenant Governor in Council and the Ontario

Teachers' Federation entering into an agreement that provides,

"(a) that the pension plan continues;

"(b) that the members of the plan are entitled to surpluses and are liable for deficiencies in the pension fund;

"(c) that the liability of the crown to contribute under the plan is limited to a specified amount or to a specified percentage of member contributions under the plan;

"(d) that the members may amend the plan, subject to the restrictions described in clauses (b) and (c)."

Any comments, questions or discussions of this amendment to the amendment?

Hon Mr Conway: I would only say that I would not accept the amendment simply because it seems to me that by striking out the word "permanent" it somehow seems to contemplate a return to government sponsorship, or it leaves open that possibility.

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I would simply suggest that if we have a member-run plan, it should be clear that it becomes a member-run plan. It is not, from my point of view, realistic to leave open the idea. That may not be the intention, but one could imagine that as a construction of Mr Morin-Strom's amendment, that by striking the word "permanently" from clause 11(1)(b), it certainly would, I think, create the possibility that a return to government sponsorship might be an option.

I just would not want to leave a wrong impression that if we reach a point where it becomes a member-run plan—and we might very well do that at some point in the future. I just want it to be understood as that and I do not want to accept an amendment which might create confusion out there, however unintended.

The Chair: Mr Morin-Strom, do you want to speak to your amendment?

Mr Morin-Strom: I just have a couple of points. I am not sure that "permanent" is really the issue here.

Mr Jackson: Nor is it legal, I would say.

Mr Morin-Strom: One reason I do not think "permanent" is an issue is that I do not believe the minister understands his own clause. I do not believe that section 11 precludes the opportunity of ever reaching a joint agreement again in the future, and the possibility of this act still acting

under section 10, following an agreement under section 11, is still open. "Permanent" is a word in there, but it does not necessarily have effect if a future agreement were met on a joint-control option by a future government and a future teachers' federation.

Hon Mr Conway: The way I understand it, and Janet may want to comment, as I read this, if you were to strike out the word "permanently," you would certainly leave open the possibility for a reversion to, let us say, I guess either of the other possibilities, and that is not contemplated in this policy.

Mr Morin-Strom: It may not be contemplated by the current government, but I think the other clauses would still exist in the bill and that possibility still exists.

The Chair: Ms Skelton, would you like to speak to that?

Ms Skelton: The other clauses still exist in the bill, but once you have made the choice of entering into a member-run plan, or taking over the plan as contemplated here, then the liability for surplus and deficiency would have permanently been assumed by the plan members, which would remove contemplation of moving backwards to other options.

Mr Morin-Strom: I have a hard time seeing how you can talk for generations in the future that may have a desire to negotiate a new arrangement. Who knows what pension plans might look like generations from now?

Hon Mr Conway: I suppose you could always imagine new legislation, but under this regime this is what is contemplated.

The Chair: Mr Jackson, did you want to comment?

Mr Jackson: I was just having difficulty embracing the notion that although we are not fleshing out a future joint plan, the government is able to indicate that at least one element of it can be put permanently.

I just find the phraseology "permanently assumed by the active members" to be rather awkward there. If that was the minister's only objection, surely the ultimate plan would have that in it.

Hon Mr Conway: Would have what in it?

Mr Jackson: Have the concern you have that the deficiencies would be permanently assumed by the—which is set out in that subsequent legislation. We are still talking about some future potential plan here.

Hon Mr Conway: Under this proposal, what we contemplate is the possibility of a member-run plan at some point in the future. All I am saying is that under the legislation that is before you, as amended by my amendment, if we can get to a member-run plan—it just simply has to be understood that under that arrangement the entitlement to surplus and liability for deficiencies in that fund would permanently have been assumed by the plan members.

Mr Jackson: Then why are you not making an equal statement about a dispute resolution mechanism? The resolve for you to make that statement so clearly—

Hon Mr Conway: There is is not one needed in a member-run plan. The members run the plan. One can imagine the dispute resolution mechanism in a partnership, but in a member-run plan it is up to the members to decide.

Mr Morin-Strom: If the minister is willing to accept my amendment with the word "permanently" put in it, I might be open to looking at that.

Another of the concerns I have with respect to his wording is he is giving both surplus and liability to active plan members. Why is he specifying active plan members, when in fact a decision might want to be made in terms of, for example, a surplus that the benefits should accrue to both active and inactive people who are collecting pensions in terms of pension improvement? Why does the minister want to limit the dealing with the possibility of a surplus, for example, to solely the active plan members?

Hon Mr Conway: The active plan members are referred to because it will presumably be their plan. The active plan members might decide to do some things that would have a real benefit for those who are retired, but retirees would not necessarily be in a position, as I can imagine it, to shoulder any of the additional financial burden of a deficit.

Mr Morin-Strom: But they may have been the ones who overcontributed and generated the surplus, and the OTF, as it is the representative managing the plan, should be acting with respect to all plan members not solely active ones.

Hon Mr Conway: They could decide, presumably, under their arrangement how they were going to deal with it. The point here is that it would be for the active plan members to decide how their plan is going to be operating. It was not something in which the government would have—

Mr Morin-Strom: Can I ask why the word "active" is in there?

Ms Skelton: It is the liability for deficit that puts it on active plan members.

Mr Morin-Strom: What about surplus?

Mr Watson: You cannot be entitled to surplus and not responsible for deficit. The two go together. And retirees do not have the capacity to contribute to the deficit.

Mr Morin-Strom: So they are not entitled to any surplus.

I can understand on the deficit side why you do not want to go back and charge people who have already retired for picking up the deficit. If there is a surplus generated, I do not understand why you cannot have the surplus be distributed or be used for pension plan improvements for all plan members.

Hon Mr Conway: They could very well decide to do that.

Mr Morin-Strom: You might be well precluding that because of the specifics of the language here.

Hon Mr Conway: No, you are not precluding it, but what you want to preclude is a situation where more than the active plan members are somehow going to have a say in the decision, particularly one that might effect a deficit.

The Chair: Do you want to show him where it is not precluded?

Mr Morin-Strom: Maybe you should put in the clauses then, one on deficit and one on surplus.

The Chair: Do you want to point out to us the section you indicate does not preclude this?

Hon Mr Conway: Certainly it seems to me the language of (b) makes plain that the plan members under this arrangement might very well want to decide to share a surplus across the entire scheme of things. But if you are running this plan, you sure want to be concerned about anything that is going to cause a deficit. That has to be recognized because, as I think someone just pointed out, retirees are not going to be bound by any obligations with respect to a deficit.

The Chair: Anything further on this particular amendment to the amendment? I think I am hearing, Mr. Morin-Strom, that the government is not ready to accept your amendment to the amendment with the word "permanently" added. At least, that is what I think I am hearing. Are you hearing the same thing?

Mr Morin-Strom: I am hearing that even if I changed that, it probably would not be accepted.

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The Chair: I want to be fair with you, to be sure I was hearing what you were hearing.

Are you ready for the vote on the amendment to the amendment to subsection 11(1)?

Those are with for that amendment to the amendment?

Mr Morin-Strom: Recorded vote.

The Chair: Recorded vote. We are in that mode.

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft.

Ayes 3; nays 5.

The Chair: Okay. We still have the amendment to section 11 before us. Any further comments on that? Ready for the vote then? Those who are for the amendment as presented?

Okay, those who are against?

Motion agreed to.

The Chair: Section 12, no amendments presented?

Mr Keyes: For clarification, I believe that subsection 11(2) is struck out by the minister reading in subsection 11(1). Subsection 2, I think, is taken out because we have dealt with that, have we not, in clause 9?

The Chair: That is very possible. I do not have an amendment. I guess that was an oversight on my part. I think we would have to have a mover to strike out the section.

Mr Keyes: We have to have a mover to strike it out, or else vote against it, do we not?

Mr Reycraft: I think Mr. Conway's amendment took out subsection 2.

The Chair: So the amendment, I guess, did strike—I was thinking it was dealt with the first subsection.

Mr Keyes: I thought someone may have overlooked that and we were going to be accused that we had run by something.

The Chair: Okay, I will ask that section 11, as amended, be carried. We now all understand what that means. The whole of the amendment is just replacing what is there in subsections 1 and 2.

Section 11, as amended, agreed to.

The Chair: Sorry, Mr Keyes. Did you have something further?

Mr Keyes: I just wanted to draw it to your attention, because sometimes subsection 2 is looked at differently.

Mr Reyecraft: I thought we were starting to go too fast.

The Chair: That is the real problem.

Section 12:

The Chair: May I consider section 12 carried? I have no amendments before me.

Mr Keyes: Excuse me. For clarification, there is an amendment by Mr Jackson that it be struck out.

Hon Mr Conway: I can accept Mr Jackson's amendment.

The Chair: Am I missing something here?

Mr Jackson: It deals with the whole issue of regulations and composition and the powers of the board. It is been adequately dealt with by the government previously, so I move that section 12 of the bill be struck out.

Hon Mr Conway: I am pleased to agree with my friend from Burlington South.

The Chair: The clerk is finding a difficulty with this. It would be better if we voted against this. At least, that would be more appropriate to the rules of order of the standing committee. So could I ask if section 12 is considered carried?

Section 12 negatived.

Section 13:

The Chair: I do have some amendments to section 13, but I think the first one I have is to subsection 10. If you would like, I could ask if subsections 1 through 9 can be considered carried. Carried.

We will go to the motion that is being placed by Mr. Morin-Strom.

Mr Morin-Strom moves that subsection 13(10) of the bill be struck out and the following substituted therefor:

"(10) In compliance with the investment requirements established under the Pension Benefits Act, 1987 for pension funds, the board may assign or transfer a debenture of Ontario held by the pension fund, notwithstanding any term in the debenture to the contrary, if the board considers it reasonable and prudent to do so."

Mr Morin-Strom: I believe this is an improvement over the current subsection 10 which basically says that the board that is to manage the Ontario teachers' pension plan does not have to abide by the rules and regulations of

the Pension Benefits Act. In particular, there are prudence requirements of the Pension Benefits Act which mandate that a board manage its investment funds in the best interests of the members of the fund and that it ensure the fund is invested in a balanced portfolio that will achieve the best possible return while insuring the minimum risk possible.

I think that a section such as the government section here, which allows the board to undertake imprudent and unreasonable investment policy with respect to those pension funds, exempting the board from the prudence requirements of the Pension Benefits Act, is totally out of sync with the mandate of the Pension Benefits Act.

Surely we should be insisting that this board balance its investment policy and the only way it can do that, particularly in the early years, is it has to have the right to be able to sell off the tremendous amount of investment that is in debentures and borrowings from the government of Ontario. To be able to do that, those securities have to be made transferable or assignable.

The government of Ontario has put specific provisions on its debentures in this pension plan that prevents the management of that plan from selling off those holdings, trading them with other pension funds or mutual funds or institutional investors, which certainly would be possible and would be mandated by the Pension Benefits Act if it was to be able to achieve a balanced investment policy.

In the best interest of managing this fund we should mandate that this fund be managed under the Pension Benefits Act and I suggest my wording is far preferable to the government's proposal.

Hon Mr Conway: It is not so much the wording as the general approach to the fund management that separates us here. I do not favour the argument for the amendment that has been offered by my friend the member for Sault Ste Marie simply because while it is true to say there is an exemption from PBA, it is simply to effect a transition.

In this respect we have had advice from commissioners like Rowan and others who have indicated that the existing assets remain non-marketable to effect an orderly transition for both the fund and the financial market out there. It is very much in the interest of the fund and good management that we not do what my friend the member for Sault Ste Marie suggests. I think it would be counterproductive to do that.

Bob Watson and Sandra Tychsen are here from Treasury. They might offer a word from

that perspective. I think that in light of what prudent management calls for and what kind of impacts would be felt—this is the second largest pension fund in the nation—to immediately convert all of those assets into the kind of marketable securities the honourable member's point suggests, I think would not be productive of the kind of result he would hope for.

The Chair: Mr Watson and Ms Tychsen, you have copies of this amendment, I presume. Would you like to comment?

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Ms Tychsen: This provision was designed to effect the minimum prudency exemption necessary in order to effect the recommendations of a number of expert studies designed to study the question, "Could these very large funds be moved to market prudently without disruption to the capital markets?" To do so, the provision is designed to only allow prudency exemption on the nonmarketable debt, but to allow the new board to take into account its entire portfolio and therefore get a balanced asset mix as quickly as possible.

The new net cash flow available for market investment is substantial, \$2.5 billion next year and \$2.8 billion the following. Actually the fund, which currently will transfer about \$15 billion in nonmarketable assets, will have over \$15 billion in new net cash flow to be invested in the market within the next five years. Following the recommendations of Rowan and others, that provision was designed.

I might also mention that this bill moves the new net cash flow to market more rapidly than was actually recommended when the reports were provided in 1987. This bill makes all the new net cash flow arising after January 1990 available for market investment, whereas earlier reports had thought it might be better phased into the market. In fact this is the maximum amount of new net cash flow made available for market investment consistent with prudency.

Mr Morin-Strom: I wonder if the spokesman could tell us how much Ontario government debt, or both Ontario government debt and guaranteed debt such as Ontario Hydro's, is currently in the marketplace trading today?

Mr Watson: Ontario Hydro's market debt is something in the order of about \$23 billion. I think it has about \$2 billion with respect to the Canada pension plan and the remainder is in the market and free.

Ms Tychsen: We could provide you with the actual figures. As you may know, a large

proportion of Ontario's debt is represented by nonmarketable debt currently. That is one of the reasons it is important to move the pension assets to market as they mature.

For example, the teachers' pension debt now represents almost 40 per cent of Ontario's total debt. It would be a massive change to the debt structure of Ontario to suddenly make that debt marketable and could cause concern. Certainly it would be a change in the conditions of issuance of the debt of holders of Ontario Hydro bonds and other debt and could be of potential concern to rating agencies and others.

Mr Morin-Strom: In terms of the prudency requirements, are you suggesting that something imprudent would likely be done by the board if it had the right to market the debt?

Ms Tychsen: Prudent—perhaps I used the wrong choice of word. It would be consistent with an orderly move to market to transfer the current assets as they are, as nonmarketable debt, and to invest the new net cash flow in market investments as it becomes available and as the existing nonmarketable debt matures.

The Chair: Any further comments, questions or discussion on this amendment presented by Mr Morin-Strom?

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 3; nays 6.

Section 13 agreed to.

Section 14:

The Chair: We are now moving to section 14 and I have a motion presented by Mr Morin-Strom, actually to add. I therefore am going to ask, may I consider subsections 1 and 2 as presented in the bill carried? Carried.

Mr Morin-Strom, would you like to talk to your two additions and read them into the record?

Mr Jackson: I am sorry. I thought you were talking about section 13 for a moment. I had two amendments, subsections 14(1a) and (2a). However, I am just trying to determine if they are in any way different from Mr Morin-Strom's. I was reading that and not listening to you.

The Chair: I am sorry. Somehow or other that amendment got mislaid on my desk here.

Mr Jackson: The clerk has it, though.

The Chair: Yes, the clerk has it and that is why we have a clerk, one of the very small reasons we have a clerk. He does many more important things.

Would you please read this then? I will withdraw what I just said regarding considering subsections 14(1) and (2) carried.

Mr Jackson: I move that section 14 be amended by the addition of new subsections to provide:

“14(1a) The annual amount of every allowance, annuity, pension or deferred pension of a person referred to in subsection (1) who became entitled under a predecessor of the Teachers’ Superannuation Act, 1983 is increased \$1,000 on December 31, 1989; and

“(2a) The annual amount of a survivor allowance of a person referred to in subsection (2) is increased \$500 on December 31, 1989.”

The Chair: I am having a little bit of difficulty with this motion and you know why.

Mr Jackson: Yes.

The Chair: In that you know it is only—

Mr Jackson: So many people recommended it to this committee and we just presumed they were listening to those valid arguments and reason would prevail.

The Chair: If the minister wants to make this motion then he has the privilege of doing so.

Mr Jackson: Perhaps we could invite a reaction from the government on this—

The Chair: It is only a member of the cabinet who can make this kind of amendment.

Hon Mr Conway: I would like to maybe help the committee by simply indicating that while I understand the pressure that has given rise to the amendment—on both sides actually because I am looking at the current amendment standing in the name of the member for Burlington South (Mr Jackson) and another amendment standing in the name of the member for Sault Ste. Marie (Mr Morin-Strom)—they are benefit improvements and this process, this legislation is not about effecting benefit improvements, however virtuous and meritorious that important exercise is.

I do not therefore favour either of the amendments for that reason. We are here to provide a new policy and a framework to support that policy. We are going to come up against this subsequently, tonight and tomorrow. I want to be very candid with my colleagues in recognizing the tremendous pressure out there for benefit improvements, but that unfortunately is not

specifically what this exercise and legislation is about, however much some people might imagine it is.

Mr Jackson: We did not receive any additional amendments from the government. We were just holding out hope that perhaps this was one of them. Since the minister has reserved the right in his own way of only letting us see those amendments moments before we have to deal with them, I thought that I was giving him time to find those amendments for those superannuated teachers, who I know had his support prior to 1985 and were looking for his subsequent support since 1985.

The Chair: I can either consider this out of order or you can withdraw it, one of the two, but it definitely—

Mr Jackson: You rule it out of order. I have no intention of withdrawing it.

The Chair: I would like to rule it out of order since it is—

Mr Jackson: This is a commitment of the conscience and it is one I believe in very strongly and the minister knows that.

The Chair: I think I have to do the same with the next motion if there is no movement by the minister, and he has made his position quite clear.

Mr Morin-Strom: Let me clarify. Is this the charge on the consolidated revenue fund?

The Chair: These are both directing funds and they therefore can only be made, as you know, by a member of the executive council.

Mr Jackson: Even the funds of members?

Mr Morin-Strom: Even though it is coming out of the pension plan as opposed to out of the government?

Hon Mr Conway: This causes public moneys to be spent.

Ms Skelton: It would increase the unfunded liability of the fund, which the government, under this plan, is obligated to pay, so it would put a cost on the consolidated revenue fund.

The Chair: All right. I rule them both out of order.

Section 14 agreed to.

Sections 15 and 16 agreed to.

Section 17:

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The Chair: Mr Morin-Strom moves that clause 3(f) of the Teaching Profession Act, as set out in subsection 17(1) of the bill, be struck out and the following substituted therefor:

“(f) to represent all members of the pension plan established under the Teachers’ Pension Act, 1989 in the administration of the plan, the management of the pension fund and the negotiation of agreements under sections 10 and 11 of that act.”

Mr Morin-Strom: I believe this is an amendment that was recommended to the committee by a number of presenters to the committee. I do not recall any presenter to the committee opposing this change. I guess the key point is that the language in clause (f), the words “the negotiation of agreements” would empower the Ontario Teachers’ Federation to have the right to negotiate the agreement referred to under sections 10 and 11. I do not believe the government’s language is sufficiently strong in that regard.

Hon Mr Conway: I simply prefer the language of the bill in this respect. It is clear from clause 17(1)(f) that the right of the OTF to represent all members is established there and then the powers of negotiation are set out in subsection 17(2).

Mr Morin-Strom: Where?

Hon Mr Conway: Subsection 17(2).

The Chair: We are working on section 17 at the moment.

Hon Mr Conway: I just think that is clearer. We recognize representation is an object for OTF under subsection 17(1) and then the powers of negotiation are set out in subsection 17(2).

Mr Morin-Strom: Why is it you do not want to have negotiating a part of section 3 of the Teaching Profession Act? What is distinctive about that section as opposed to section 9 of the act? You are saying you only want powers to negotiate under section 9 of the Teaching Profession Act. Why is it that you are opposed, or what would the impact be of having the negotiating powers under section 3 of the act?

Ms Skelton: Section 3 relates to the objects of OTF, not to its powers. The section where we are putting in the series of things they do as representatives of the members of the plan is in a section relating to the powers of OTF. That is where we have delineated the powers. Negotiation is a power they carry out, not an object of the organization.

Mr Morin-Strom: So you do not think one of their objects should be to try and achieve either a joint or a teacher-run plan.

Hon Mr Conway: I suppose you could say that.

Mr Morin-Strom: It belies a lot of the comments you have made earlier.

Hon Mr Conway: I would not agree with that assessment.

Mr Jackson: I will support it. It is substantively similar to the one I tabled as well. I think the bill is deficient, especially in light of the recent explanation. It is appropriate it be included and I think the bill will be deficient without it. I certainly have no difficulty naming OTF as the official bargaining agent for the plan representative. The government seems to have difficulty as to where it places that responsibility. I disagree with the minister.

The Chair: Any further comments? Are you ready for the vote on subsection 17(1)? A recorded vote.

The committee divided on Mr Morin-Strom’s amendment, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 3; nays 6.

Section 17 agreed to.

Sections 18 to 20, inclusive, agreed to.

Schedule 1:

The Chair: I understand that because the schedule is part of this legislation we do not go into the little spiel of, “May I consider the short title of,” and everything like that until the end of the schedule.

So we have now to begin. At this moment, just for the knowledge of the committee—I think you likely all know it—I have over 50 amendments to schedule 1 in front of me. We have a lot work.

Mr Jackson: Have we received the 50 amendments?

The Chair: I have got only what you have been given. If there is something new tonight, other than the ones that Mr Morin-Strom presented, I have not got them.

Mr Jackson: The minister indicated he had more amendments and he has not tabled them. I just wondered if the 50 included the ones he was alluding to earlier?

The Chair: This is what I was given last Wednesday night and what Mr Morin-Strom gave. Some of those were of course repeats, and I have spent a little bit of the supper hour trying to

get mine into order. I have nothing else other than those two things in my pile. I do not know whether anyone else wants to table anything at this moment, but I have not had any indications from anybody that they do. Anyone into the mode of tabling at the moment? I think then that we will begin. Are we ready to begin?

The first amendment that I have to schedule 1 is an amendment to be moved by Mr Jackson, which is subsection 3(3) and section 4.

May I consider sections 1 and 2 carried? Carried.

The Chair: Now, if we go then to page 13, we are talking to section 3. May I consider subsections 1 and 2 of section 3 carried? Carried.

Mr Jackson: I move that subsection 3(3) and subsection 4 of schedule 1 be deleted.

The Chair: I am trying to figure that one out in the writing. You have got subsection 3(3) and you have just read into the record subsection 4, but what you presented to me is section 4. Which is is it?

Mr Jackson: It is section 4 of schedule 1. You may wish to separate those.

The Chair: So now we are working sort of in two parts, which makes it very awkward unless they are very directly interrelated. Are they?

Mr Jackson: They are. The basic principle was presented during the hearings that occasional teachers should be active plan members. Those who participated would be familiar with that presentation. I have tabled the necessary amendment.

Hon Mr Conway: I would just like to indicate that this is, as I remember it, the locking of occasional teachers into this plan, if I am correct. I would not favour that simply because in many circumstances that I think committee members can imagine that would cost occasional teachers dearly because they would forego substantial opportunities or benefits under the registered retirement savings plans, to name put one other private pension alternative. I can imagine some occasional teachers who might teach for a couple of days, and no more, foregoing very substantial opportunities in some of those alternatives. So I am not in favour of that.

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The Chair: I am going to make a ruling on this because it is confusing the way it is presented to me here. As I have ruled before, certainly striking out a subsection is quite permissible, but with regard to striking out a whole section, it is much more in order to just vote against section 4 than to try to strike it out. And I cannot have these

two things on the floor at the same time because I have got intermediary things to deal with. So I would ask we deal at the moment with just subsection 3(3) and deal with the other when we come to it.

Mr Jackson: That is fine with me. As the mover, it has my agreement we proceed on that basis.

The Chair: Okay, then let's do that.

Mr Jackson: It is my understanding that recently the federal government has made some amendments in this area. Is the minister familiar with those?

Hon Mr Conway: I do not think the final rules have been determined. There was some announcement last week, but I do not think the final language has been agreed to. My concern here, again, is that under the rules that have been in place the reason I want to maintain the flexibility is if an occasional teacher chooses to opt in, that is fine; he ought to be encouraged to. But if they were forced in, as you know, they would be part of a registered pension plan and their maximum ceiling for an RRSP would drop from \$7,500 to \$3,500. That could very well have an extremely negative effect upon that individual.

Mr Jackson: My understanding is the ruling from the feds is that in this occasional status, which has application for more than just teaching, those—you refer to it as a penalty—are not nearly as severe.

Hon Mr Conway: What the federal intentions are may or may not be as advertised. I think the bill is perhaps currently at first reading in the Parliament of Canada. Regardless of what the federal changes are, and I am not aware that they are going to substantially change the situation we have now, I just think we would really prejudice a lot of occasional teachers if we locked them in.

I think giving them the opportunity to choose is entirely appropriate. If they wish to join, fine, but to lock those people in, many of those people who may not teach a great deal, is to really prejudice their situation under other possibilities that they may very well want to avail themselves of.

Mr Jackson: With this government's increased use of occasional teaching in response to its teacher manpower—human resources shortages, I correct myself—

The Chair: Thank you very much.

Mr Jackson: —it is apparent that this is becoming more the normative practice in terms of meeting the teaching demands in this province. We have a growing list of people who fall

outside of the pension, and certainly I feel that the arguments that were presented the committee in this area were rather cogent arguments and worthy of support. If the government does not agree, then that is fine.

Mr Morin-Strom: I would like to support the motion. I think a principle that applies in terms of a desirability to belong in pension plans should apply across the board. The minister has a principle that all regular teachers belong to the pension plan and I think the same should apply to occasional teachers. There is no reason why membership on a short-term basis in a pension plan should jeopardize other pension plans that they may be in at other times, but when they are in the teaching profession they should be contributing to the teacher's pension plan.

The fact is that most people who do not have pension plans do not do invest in their own RRSPs or build up their own pension plan. It is in the best interests of society as a whole that we encourage people, and in fact mandate people, to belong to particularly good pension plans such as the teachers' pension plan. That kind of protection is what people are going to need in order to ensure that they have a decent pension when they reach retirement age.

The Chair: Thank you. Any further comments? Ready for the vote then on this amendment to subsection 3(3), which is an amendment that it be struck out.

Mr Jackson: Recorded vote.

The Chair: Recorded vote.

The committee divided on Mr Jackson's amendment, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: Mr Jackson, you have another amendment to section 3 which I have before me as subsection 3(4).

Mr Jackson: I move that subsection 3(4) of schedule 1 be amended to provide:

"3(4) Despite subsections (1), (2) and (3) a member receiving retirement allowance, under this act or a predecessor act, who becomes re-employed in education is not an active member."

I will leave the references to sections 3(5) and 3(6), because if it is passed then that will be housekeeping.

Hon Mr Conway: I do have an amendment here. I think you will be—but I cannot accept this one.

Mr Jackson: Why not?

Hon Mr Conway: Because I think what you have to have is some sense you are dealing with a retiree, and it is very hard—

Mr Jackson: Let me speak to my amendment, because you are indicating that you can reach partial agreement with me. But it is not out of order, that is the main thing.

The Chair: No, it is not out of order.

Mr Jackson: That is an improvement.

The Chair: Yes, it is an improvement, but I would think that it might be helpful if we saw the government amendment. Then you might find that it—

Mr Jackson: I would like to speak to it before the minister dissolves some of the imagery around this.

The Chair: Oh, my. Okay, let's go. I thought you wanted the full knowledge.

Mr Jackson: You have an amendment. Why do you not table your amendment while I am speaking to this and we can facilitate this evening.

The Chair: Okay, let's go for it.

Hon Mr Conway: I guarantee you will like this.

Mr Jackson: While he is distributing that, I will give you my argument.

Hon Mr Conway: I want to hear a good Tory explain to me how this works.

Mr Jackson: Well, a good Tory did not get the teaching resources in this province into as much trouble as we find ourselves in today. We have more and more retired teachers teaching. It is apparent that we have one standard for the rest of the country and one standard for Ontario. I feel that we should not be causing that penalty to occur in that section.

Hon Mr Conway: My problem is that you work however long and then you retire. The trouble with this amendment is I do not get the feeling that retirement means anything. I think it has to mean something if you are talking about a pension. A pension, it seems to me, in principle assumes that there has been a point at which there has been a retirement and I just think that line is completely lost in the honourable member's amendment.

Mr Jackson: When we retire from these hallowed chambers there does not seem to be any

penalty with our pensions and yet there is all manner of public appointments for us to sort of extend our work. One could reasonably argue that we never really retire from the political arena. There are many good former Liberals who are enjoying the benefits of that. Yet, quite frankly, if we had a plan in this province that adequately addressed the teacher needs in this province, the demand for teachers, and we were not putting the increased pressures to go to that pool—your predecessor indicated under difficult questioning in the House about resource matters that we had this pool of retired teachers who could participate and assist and relieve the pressure. I think you are the one who is having difficulty acknowledging something which I think is a little fairer.

Hon Mr Conway: I think the—

Mr Jackson: But I am prepared to look at your amendment.

The Chair: Are you doing that right now?

Mr Jackson: I am just about to.

Mr Keyes: Let's vote on this amendment first.

Hon Mr Conway: To come back to the honourable member's example, it is certainly true that one can retire. One can think of all kinds of situations. You work at Dofasco, you retire, you take its pension and it may very well be that Stelco chooses to hire you anew for a set of new tasks, or you retire from the Ontario government and you go and do good work for the government of Canada. In fact, you have taken your pension benefit and you have gone to work elsewhere. I think you will find that most employers and most pension plans do require a delineation that when you retire you have retired.

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Mr Jackson: You become a consultant. If teachers were allowed to become incorporated and become consultants and teach under contract to school boards, then they would not have any problem. They would continue collecting. That is the real reality experience out there, not what you are suggesting.

Hon Mr Conway: I have to believe that taxpayers in Halton region would say, could argue generally, "Isn't this a bit strange, that we are at one and the same time paying out of the same account a pension benefit and potentially a full-time salary?"

Mr Jackson: The people in Halton are increasingly looking at this all across the board. I can show you in the municipal sector, the regional sector, the federal government's civil

servants, I can point you to all sorts of people who are drawing full pensions and who are out doing the kind of work they were paid to do when they were working for their respective government agency. I am sorry, let's not take the committee time with your argument. It is not reflective of what is really going out there in the real world.

Hon Mr Conway: I rest my case on the arguments that I have already submitted.

Mr Jackson: You have the necessary quorum in which to do that.

The Chair: I would like to vote, if it is appropriate now that everybody has made their comments, on the amendment made by Mr Jackson to subsection 3(4) of schedule 1. Do you want a voice vote or a recorded vote?

Mr Jackson: Recorded vote and we will get it over with.

The committee divided on Mr Jackson's amendment, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliott, Fawcett, Keyes, Stoner.

Ayes, 3; nays 5.

The Chair: All right. I presume that took in subsections 3(4), 3(5) and 3(6), the amendment as it was presented by Mr Jackson.

Mr Jackson: No, only subsection 3(4). I was silent on—

The Chair: You were silent on the other two?

Mr Jackson: That is correct.

The Chair: Okay, I am sorry. We have, however, an amendment in between that to be presented by Mr Conway.

Mr Conway moves that clause 3(4)(b) of schedule 1 of the bill be struck out and the following be substituted therefor:

"(b) the member's 21st day of employment in education in a school year following three school years during each of which the member has been re-employed for fewer than 96 days."

Hon Mr Conway: Essentially, it is to provide that after the retiree has availed herself or himself of the new provision which allows a retired teacher to teach up to 95 days, that individual can, in subsequent years, teach up to 20 days.

Mr Keyes: As is currently the case.

Hon Mr Conway: As is currently the case.

The Chair: Are there any further comments or discussions on this amendment, as presented, on clause 3(4)(b)?

Mrs Stoner: I have a question. Is there not some reference to the number of days in a semester that was appropriate here, some discussion on that?

The Chair: Does this relate at all to the concept of semestering?

Mrs Stoner: Yes, it does.

The Chair: We are having a question, Minister. Are you prepared to answer that?

Hon Mr Conway: Certainly that, as I recall, was a submission of at least one of the groups. We have simply tried to respond to some of the concerns that have been out there about the need to provide additional opportunities for retired teachers who may want to teach. Quite frankly, as Mr Jackson has indicated, there are and have been some pressures in recent times to allow school boards to make sure they have got an available supply of qualified teachers. This is a significant improvement on what has been. I think that will be admitted. We feel that this is quite a good response to what has been identified by many in the community as a needed—

The Chair: Are we ready to vote on this amendment to clause 3(4)(b)? Those who are for that?

Motion agreed to.

The Chair: Okay. We have an amendment before us now to subsection 3(5). Mr Jackson.

Mr Jackson: Where? No. Mine are all out.

The Chair: You are not going to go forward with section 3?

Mr Jackson: No. They are all tied together.

The Chair: Okay. So those are out. Now, we have not yet voted on section 3 in its entirety. May I consider section 3 carried? Carried.

It was amended. We did have one amendment there to subsection 4, so I have to say “as amended.” It is carried as amended.

If we go to sections 4, 5, 6, 7, 8 and 9, may I consider them carried? Carried.

We are now looking section 10 of schedule 1 then and I have a government motion. It looks like a relatively lengthy motion.

Hon Mr Conway: I can just indicate that this is, despite the length of it, a technical amendment that provides a mechanism for calculating credited time when a plan member is on long-term disability.

The Chair: Mr Conway moves that section 10 of schedule 1 to the bill be amended by adding thereto the following subsection:

“(2a) The amount of credited service of an active member on LTIP in a year is calculated using the formula, $A \times (B/C)$, in which,

“‘A’ is the amount of contributions for the year made by or on behalf of the member,

“‘B’ is the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed or, in the case of a member who is no longer employed in education, was last employed before the date of disability, and,

“‘C’ is the amount of contributions normally made by the full-time employee described in the definition of ‘B’ for the period described in that definition, calculated at the salary used to calculate the amount of the member’s contributions.”

The Chair: Did you want to speak at all to it? The bottom is, what, an explanation?

Hon Mr Conway: Yes.

The Chair: Any discussion of this addition? May I consider this carried?

Motion agreed to.

The Chair: The next amendment I have is to subsection 0(3a). We are going to add something? May I consider subsections 10(1) and 10(2) carried as amended? Okay.

Now, if I may, I will ask Mr. Morin-Strom to speak to his amendment to subsection 10(3a), which is an addition.

Mr Morin-Strom: I will move it first.

The Chair: Mr Morin-Strom moves that section 10 of schedule 1 to the bill be amended by adding thereto the following subsection:

“(3a) An active member shall receive credited service for days on which the active member is absent from employment in education while participating in a legal strike or while locked out, whether or not the member makes contributions in respect of those days.”

Mr Morin-Strom: I think this section was recommended by a number of deputations before the committee. The issue here is really a question of fairness and the possibility that a member who is getting close to retirement could be seriously penalized in terms of his pension formula calculation if he missed a number of days credited service in one of his last few years of work, which becomes the basis for the average pension calculation.

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It puts a member in a position of jeopardy with respect to his pension entitlement and those members who are getting close to retirement in

an unfair position vis-à-vis how they should conduct themselves with respect to the possibility of voting for a strike or not and participating in a strike. It does not seem fair that a member should be potentially penalized in terms of his retirement allowance on the basis of a number of days he may miss work due to a strike or lockout in one of his last few years of employment.

Hon Mr Conway: I can appreciate the honourable member's concern. It is my understanding that there is a well-established administrative practice that counts this time, would continue to count it and would deal with the situation that the honourable member has indicated. I gather there have been some discussions, and it is our expectation that that well-established practice will continue. The member's concern and objective has been and will be met, but it has been and, I would suggest, ought to be continued to be done by virtue of, I gather, a very well-developed administrative practice.

I would not favour the amendment both because I believe it to be redundant and I can imagine a situation where there could be some double counting.

Mr Jackson: How do you figure double counting?

Hon Mr Conway: It is my feeling that the objective the member wants, which is an understandable one, has been dealt with in the past. That is the way it has been done, and it should certainly continue, and I expect it will continue in the future.

Mr Morin-Strom: It seems to me that it would be helpful if we got a clear reaction from some of the ministry people with respect to this particular point, both with respect to what the practices have been and any reason as to why we should not establish in law this issue of basic fairness in terms of how the pension calculation is made.

Ms Skelton: There are two issues related to strike. One is time credit. School boards at present report teachers as present while on strike, and that is the way everybody's instructions stand. So if you did this, you would have change the instructions, separate out the strike time and report it separately under the provision, which would complicate things and potentially lead to some error.

Second, in section 95, later in the act, it allows the teacher to top up the salary lost so that his best five, for instance, would not be affected. The provision to make sure that they do not lose on their pension is already covered, without this.

Mr Jackson: Is it covered in legislation or is it covered purely at the pleasure of the government as the manager of the fund? There are some elements of mutuality and co-operation in the current arrangement. These matters are brought forward and discussed, there is a ruling and it becomes the practice.

We are shifting to a government-only plan. The degree to which this becomes essentially a bargaining chip looms very clearly. Where the legislation is silent, there is potential for the government in these consultations, which we are afraid to put in the bill, to say, "I think we have had a change of heart because we have had a rather protracted strike affecting a large number of teachers in this province, and we wish to take a differing view."

Ms Skelton: If there was a problem for some reason with time credit, it could also be dealt with through section 95. You would not need this section to do it.

Mr Jackson: Through which?

Ms Skelton: Section 95 of the schedule.

Mr Jackson: I do not have that here. Is that is this?

Ms Skelton: Yes. It is later. It is in the purchase provisions.

The Chair: Page 46.

Mr Jackson: What are they contributing, just so I understand this? They are called upon to top up.

The Chair: Yes.

Mr Morin-Strom: That is the contribution side of it. That does not address receiving service credit.

Ms Skelton: You do receive service credit.

Mr Jackson: Once you pay for it.

Ms Skelton: Once you pay for it.

The Chair: Any further comments on this motion we have before us to subsection 10(3a)?

Mr Elliot: I am voting against the amendment because the way it reads, I feel very uncomfortable with respect to the point just made in section 95. I think you should be able to buy the credit, but I do not think, the way this one reads—the way I read it right now is that if you go on strike, there is no penalty at all associated with that. You are going to have the time in the fund, and your contributions are going to have to be considered while you are on strike. Whether it is the lockout or the strike, that does not sit right with me.

I am not voting against it because of accepted practice or anything. I am voting against it because I do not agree with it. I think there is

accepted practice there, and I think you can get the time back the way 95 is reading now. But I recall the day on 18 December some time ago, and a lot of people are out there with one day short because they did not, without buying that back or with no opportunity to buy it back. Accepted practice now may be different than it was for some folk back a ways.

I do not think we should be talking about accepted practice here. We are making a law. I think it should be based on the wording that is in front of us, not on accepted practice. I am voting against it because I do not agree with it the way it reads.

The Chair: Anything further on this particular amendment? All right, are we ready for the vote then on the amendment to subsection 10(3a)?

The committee divided on Mr Morin-Strom's motion, which was negatived on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: I have another amendment in the same subsection and the same clause put forward by Mr Jackson. Is there a desire to place that still?

Hon Mr Conway: Subsection 11(3), right?

The Chair: No, I am at 10(3). I am asking Mr Jackson.

Mr Jackson: I had a similar one and that is why I was supporting it.

The Chair: So you are not going to place that at the moment.

Mr Jackson: I am going to receive the same support from the government as Mr Morin-Strom just enjoyed.

The Chair: I always like to give everybody the opportunity to present what he has before us.

I would like to take a vote, if I may, on section 10. We had one amendment to this section in subsection 10(2a), the addition of the formula. I would like to ask for a vote then on subsections 10(1) through (6).

Agreed to.

The Chair: Now, we are at section 11 and I have a motion placed by Mr Morin-Strom to subsection 11(1). I seem to see some other amendments coming forward from the hand of the minister.

Mr Keyes: I think we have one.

The Chair: Do you have a motion there, or am I prejudging?

Hon Mr Conway: I just want to say that this is another one of those cases when I was reading the amendments and learning things that I never knew. I want here to really agree with Mr Jackson—believe me, I want to agree with him—and I just want to offer an amendment that I think makes the point. I have been sitting down with the lawyers and I think we perhaps have language that we think makes the point a little more clearly. So if I could, I want to accept that.

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Mr Jackson: If you had attended the public hearings, how much more quickly this whole process would have occurred, with such efficiency.

Hon Mr Conway: Quite frankly, some of what I have heard I am glad I did not know earlier, if you really want to know the truth of it.

Mr Jackson: If you had listened to and met with the teachers' federation you might have found out about it.

Hon Mr Conway: It is surprising how some people were not volunteering information about certain possibilities that your amendment in this respect seeks to, I think, properly address.

Mr Jackson: I will quit while the going is good.

The Chair: On that positive note, we are looking at the amendment to subsection 11(3). Is that correct, or have you got something else you are going to put before us?

Hon Mr Conway: Essentially, I want to agree with Mr Jackson. The amendment that I am circulating, I think, just simply clarifies the intent of Mr Jackson's amendment.

The Chair: As I understand it, Mr Jackson has not read his into the record yet, so we will wait and see if he still wants to do that after he looks at yours. Correct? We will give everybody a moment to read that.

Mr Jackson: That is fine. I will proceed with the minister's amendment.

The Chair: Mr Conway moves that subsections 11(3) and (4) of schedule 1 to the bill be struck out and that the following be substituted therefor:

"(3) If a member described in subsection (2) receives a pension during the school year, the member shall receive credited service only for those months during which the member does not receive a pension.

"(4) If a member described in subsection (2) becomes employed in education for the first time on or after 1 January 1990, the member shall receive credited service only for that portion of the school year during which the member is an active member."

Any comments or discussion on the amendment as presented by Mr Conway? Those who are for subsections 11(3) and (4), as amended? May I consider it carried? Carried.

Hon Mr Conway: I just want to publicly thank my friend the member for Burlington South for giving me this particular opportunity.

The Chair: May I consider section 11 of schedule 1, subsections (1) through (5), as amended, carried? Carried.

We are now on to calculation of pensionable salary, and this is beginning with section 12. I do have an amendment before me to subsection 12(5) of section 12.

Mr Jackson moves that section 12 of schedule 1 be amended by the addition of a new subsection 5 to provide:

"For the purposes of subsection (1) where an active member elects to purchase service credit under sections 93, 94 and 95, the member's pensionable salary for the school year includes payments for loss of income resulting from the absence."

Any comments or discussion on this particular amendment to subsection 12(5)?

Hon Mr Conway: Here again, I find myself wanting to agree with Mr Jackson, and my staff simply has indicated that the purport of this is better placed in the next section, 13a. I would just simply agree in principle with Mr Jackson and I would circulate an amendment that we think makes the agreement possible and places this provision that deals with this in the next section. So if I might—

The Chair: Do you want to do that now, Mr Jackson, before we take a vote on section 12?

Mr Jackson: Yes.

The Chair: That is what we will do.

Mr Jackson: This is a most interesting way of doing amendments.

The Chair: It is different, I think.

Mr Jackson: It reminds me of Sergeant York shooting turkeys, you know?

Hon Mr Conway: That is what committee is all about.

The Chair: You do not want to consider yourself a turkey, I hope.

Mr Jackson: No.

Hon Mr Conway: Are you in the minority around here?

Mr Jackson: Since it is encumbering the chair, I will leave that to your own imagination.

The Chair: Okay. Let's just read and see what we have here before us.

Mr Morin-Strom: Maybe we can ask the minister what subsections 1 and 2 are attempting to do here.

Hon Mr Conway: I would be very happy to defer to John Burton.

Mr Burton: As I understand it, what the amendment to subsection 12(5) tried to do was recognize the fact that if a teacher is buying credited service, the calculation of his pensionable salary would have a gap for the year during which he is buying that credited service. What subsection 13a(1) does is say that when you are buying credited service, the teacher will pay the contribution and this will, in effect, deem him to have earned a salary for purposes of calculating his final average salary. It will deem them to have received a salary in the amount that they would have received had they been working during that period of break or absence, so that if that period falls within their last five years, then it is the full salary that they would have earned during that time, recognizing that they have made the contribution in purchasing credited service.

Mr Morin-Strom: Sounds good.

The Chair: Mr Jackson, are you ready to respond to this?

Mr Jackson: I was enjoying the minister's comments from afar.

The Chair: It was not the minister speaking, unfortunately; it was Mr Burton.

Hon Mr Conway: Fortunately.

Mr Jackson: I know the sound of the minister's hand.

I find the government's wording quite acceptable and will withdraw my amendment and proceed.

The Chair: We will not have to vote on it if you are going to withdraw it.

Okay. We are into dealing with section 12. I do not think I have any other amendment before me, so may I consider subsections 12(1), 12(2), 12(3) and 12(4) carried? Carried.

We are then into section 13a. I do not think this has been read into the record.

Interjection.

The Chair: I am sorry. The clerk has just reminded me that we have something preceding

this, and that would be the amendment of Mr Morin-Strom to section—

Interjections.

The Chair: I was going to deal with it before I take the vote. Are you advising me to take the vote on 13 first? Okay. I will do it that way then. I have been advised that we may vote now on subsections 13(1) and 13(2). May I consider those carried? Carried.

We will now read in this addition of 13a.

Mr Conway moves that schedule 1 of the bill be amended by adding thereto the following section:

“13a(1) The pensionable salary of a member who purchases credited service under section 93, 94 or 95 for an absence or break in service is the amount of remuneration that, in the opinion of the member’s employer, the member would have earned had he or she not taken the absence or break;

“(2) The pensionable salary of a member who purchases credited service under section 102 is the amount of the member’s remuneration for employment during the applicable period.”

May I consider schedule 1, section 13a, carried? Carried.

May I consider section 13 of schedule 1, as amended, carried? Carried.

Okay, now we are into section 14 and I do believe I have some amendments from Mr Morin-Strom. That also was for the bill, was it?

Interjection: The bill as well?

2030

The Chair: Sorry, I guess I do not. Unfortunately, I got one mixed up there from the bill.

Are there any further amendments to be presented as we proceed to section 14? Okay, may I consider sections 14, 15, 16, 17 and 18, as presented in the bill, carried? Carried.

We can actually turn the page now and we are moving to section 19 of schedule 1 and there is an amendment to be presented by Mr Jackson.

Are you going to read your motion in or are you waiting for the minister to make a movement flashing—

Mr Jackson: I just thought I would allow him to pre-empt me completely.

Hon Mr Conway: Can I? In not the same way.

Mr Jackson: You are not doing so bad so far, Sean.

The Chair: I do not see anything flashing here to my left that I have seen before.

Mr Jackson: All humour aside, it is great fun, but this is completely new and it is completely

inconvenient and I am surprised that somebody is not just simply saying, “Minister, if you’ve got further amendments, for God’s sake, just let us have them so that I can look at how they mesh or do not mesh with what I have.” It literally limits my ability to amend. I do not wish to engage in 20-minute breaks in order to garner my colleague to caucus with your own lawyers to get a better understanding as to what is going on.

I think now that I get a sense of the areas in which you are involved, I would like to formally request all or any further amendments at this point in time so that I can analyse those, and certainly would want those before nine o’clock, so that I can facilitate the speedy completion of this bill when we reconvene tomorrow. But I do not know of a committee that has ever operated in this fashion, ever, in the five years I have been here.

Hon Mr Conway: Listen, I am trying to be helpful. I can remember times when I used to argue from your position, “Why would you not consider,” and I was given more backs of the hand than a few and I thought that was just the normal way it was done. One of my predecessors did it to me with a regal dispatch that I took as a normal course of doing business.

I do not mean to be difficult. In this case, for example, I want to just indicate that I do not accept the amendment in the here and now. I do not quite think it is necessary, and even if I did, I would say that I would regard the amendment better placed in the Education Act as opposed to in this particular legislation. That was really the only point I was going to make.

The Chair: May I have it clarified? Are there any further amendments, particularly to part III of this? I think it is a legitimate request. Certainly are there any amendments preceding section—

Mr Jackson: The short answer that I have is yes. I was asking the government to declare itself as well, if it has any.

The Chair: I am asking the minister.

Hon Mr Conway: I can tell you there are three or four or five other places where I think we will agree—and I do not mean to be difficult. There are a few places, one having to do with the long-term income protection plan and a couple of places on the purchase of service credits where I think we should make some improvements. If you want, I am quite prepared to give you amendments. I do not know whether they are all drafted or not. I think they are. I am quite happy. If you want them, take them.

Mr Jackson: I asked for them quite a bit earlier, so if you revisit that request, it still stands on the table.

The Chair: At this moment, does that take us to the end of schedule 1, what you are going to present?

Hon Mr Conway: I have no idea.

Interjection: Yes.

Hon Mr Conway: Yes, I am told it does.

The Chair: Then why do not do that in the course of the next few minutes? Right now I understand there is nothing further coming that I can see, unless I am not seeing the full picture here. On section 19 the only amendment I have before me is Mr Jackson's. There is no government amendment coming for section 19, correct?

Hon Mr Conway: No.

The Chair: That is not correct, so we have another amendment right now.

Mr Jackson: Yes.

The Chair: To balance this amendment?

Hon Mr Conway: Who's on first?

The Chair: Who's on first? I do not have any other amendment.

Mr Jackson: I am going to read in 19. I was reacting to whether or not we had further amendments to section 3.

The Chair: May I have the government amendment to section 19 as Mr Jackson is reading his in, please? I do think it is a case that we should move on; we should have all the facts as soon as possible. Please give me that so that we can distribute it to the committee.

Hon Mr Conway: There is no government amendment on this section.

The Chair: Thank you. Now I have got that clarified.

Mr Jackson moves that section 19 of schedule 1 be amended by the addition of a new subsection to provide:

"(5) The administrator may,

"(a) establish the methods or procedures to be used by employers for

"(i) the enrolment of members, and the collection and maintenance of information and data relevant to their continued membership,

"(ii) communications with members through the offices of the employers on matters pertaining to the participation of members in the plan,

"(iii) the deduction and transmittal of contributions required from members,

"(b) inspect records of employment maintained by employers in respect of members, and

require modification in such administration as the administrator may deem advisable,

"(c) conduct audits of the payroll records maintained by employers in respect of members,

"(d) impose reasonable penalties on employers for any failure on their part to comply with requirements of the administrator pursuant to this section."

Any comments, discussion or questions on Mr. Jackson's amendment to section 19 of schedule 1?

Mr Jackson: Just briefly, the recent work of the select committee on education dealt with matters of audit and review. We did not dwell extensively on the human resources elements of that and I think this amendment is quite consistent with what I think will become known as the direction the government is taking. I do not think it will go amiss if the books of the school boards are examined from this perspective to ensure certain information is accurate and consistent when reporting to the government and to the members themselves.

The Chair: Any comments on this amendment? Are you ready to vote if there are no comments to this? Minister, did you want to comment at all?

Hon Mr Conway: Not further.

The Chair: Then I am ready for the vote on the amendment to section 19 of schedule 1. Those who are for that? Mr Morin-Strom, Mr Allen and Mr Jackson. Those who are against? Mr Conway, Mr Keyes, Mr Elliot, Mrs Stoner and Mrs Fawcett.

I do not believe I have any further amendments to section 19. May I consider section 19 carried? Carried.

We are now at section 20(1a). Mr Morin-Strom, are you ready to present this?

Mr Morin-Strom: Yes.

The Chair: Mr Morin-Strom moves that section 20 of schedule 1 to the bill be amended by adding thereto the following subsection:

"(1a) Despite subsection 1, the amount of the required contribution for an active member on LTIP who is receiving payments under a long-term income protection agreement on the 31 December 1989, is 6.9 per cent of the member's pensionable salary."

Mr Morin-Strom: I think that the formula that is proposed by the government puts a serious penalty on teachers who are on long-term disability, because they will be having to increase their pension contribution from 6.9 per cent to 8.9 per cent on what is really a

fixed-income basis. In fact, they are then going to be taking pay cuts. It seems to me that the increased payments that the government is trying to impose on members should not be imposed on those on disabilities, but rather should be focused on the active plan members.

Hon Mr Conway: Two things: First, I agree with Mr Morin-Strom and I would circulate, again, an amendment in response to this that I think simply makes the point clearer in terms of the language.

Mr Morin-Strom: Is this on the same subsection?

Hon Mr Conway: I believe it is.

The Chair: Yes.

Hon Mr Conway: What I would do at the same time, because there are five or six other sections in schedule 1 where I think we will come to this same kind of an agreement—and if you would like, I would be quite happy to circulate these.

The Chair: I think that be would helpful.

2040

Mr Morin-Strom: Yes. I think that is particularly helpful. However, it was somewhat unhelpful that the minister did not indicate when the chair called subsection 20 that the minister had an amendment.

The normal process of activity of a committee is that government amendments to a section are presented first. In this case, the government had an amendment to this section and let me go and proceed on my amendment in the first instance. It seems to me that the government is a bit out of order to be presenting an amendment after an opposition party amendment has been tabled.

Hon Mr Conway: If I might—

Mr Jackson: Further on that point, Madam Chair, I specifically asked you if you were ruling if there were any more amendments to section 3, to which I responded that I had several and I was prepared to proceed. I distinctly remember you asking that and I got no answer from the government.

The Chair: Yes, I said part III, not section 3; that is true. They have come now. I guess the points are well made. I think we should proceed.

Hon Mr Conway: And I accept the criticism. There are a couple of places here, however, I have wanted to hear the submission, because it is not clear to me. It is not in this case, but there are a couple of other places where I think we agree, although I am not sure. I do not want to prejudice what the member might say.

I accept the criticism. There is a part of me that—

Mr Jackson: You are only protracting the process.

Hon Mr Conway: I do not think I am, but that is your view.

The Chair: So we are now looking at something that would strike subsection 20(1) and place something else.

Mr Morin-Strom, I have to ask you to be co-operative, if you so wish.

Mr Morin-Strom: On which? I have got my motion in front of the committee.

The Chair: You do not want to withdraw it then?

Mr Morin-Strom: I cannot respond to that. We just received this. I have not had time to read it, let alone—if the minister wants to explain what the distinction is between his motion and ours, fine, then maybe we can understand what it is.

The Chair: All right, let's do that then. Would you like the minister to explain the difference between what he's presenting and what you are presenting?

Mr Morin-Strom: I have made my point on mine. Perhaps the minister should say what is wrong with it and why he thinks another approach should be used.

The Chair: Mr Conway, please be co-operative.

Hon Mr Conway: We agree in principal. I just think the language set out in my amendment makes the point clearer.

The Chair: Is language the only difference or are there other differences?

Hon Mr Conway: No, just that it is not the—

The Chair: Would you please state exactly what the differences are? Mr Morin-Strom has asked for that and I think he has every right to it.

Ms Skelton: What the amendment the government has put on the table provides for is one-year grandfathering for everyone, to allow contracts to be renegotiated to provide for 8.9 per cent contribution rates by the carriers. There is a period after the act comes into force where contracts with the school boards, which is where LTIP is arranged, have to be renegotiated to encompass the new contributions. The one section provides for the government to pay the difference for that period until those contracts are renegotiated. Anyone who is disabled after that date is covered by the new contract and the payment in would therefore be 8.9 per cent, ie, the standard contribution rate.

Mr Morin-Strom: I guess I would ask whether in fact all contracts will come up within the one year. And of course, this is only going partway in comparison with my motion.

Ms Skelton: If you look at section 24 in the government motions that have been given to you, that deals with people who are currently on LTIP. It is done in two parts.

The Chair: Would you like to respond to the government amendment at this moment, Mr Morin-Strom, or would you like more time?

Mr Morin-Strom: I would like to have the vote on my amendment.

The Chair: Okay, let's do that then. Does the committee want any further discussions or comments on the amendment that was presented? Those who are for the amendment as presented, section 20 of schedule 1, by Mr Morin-Strom?

Mr Morin-Strom: What was the question?

The Chair: I am taking the vote on your amendment, as you had requested. I asked if there were any further questions, discussions or comment and nobody—

Mr Morin-Strom: Can we have a 10-minute break?

The Chair: You may, yes, before we take a vote. When I am calling a vote, you may do that.

Mr Jackson: You are calling a vote?

The Chair: I am calling a vote on this amendment, yes, because I was requested to do that. We are going to recess then for 10 minutes and we will return at five to nine, is that correct?

Mr Morin-Strom: Fine.

The committee recessed at 2045.

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The Chair: If I may now bring the social development committee back together again after our short recess, we were dealing with a motion by Mr Morin-Strom, an amendment to section 20 of schedule 1, an addition to that, subsection 1a. Are we ready for the vote on this or would you like to speak further?

Mr Morin-Strom: I think I have spoken to it already.

The Chair: Can I consider this amendment carried? I am talking about the one that was read before we went out, Mr Morin-Strom's amendment, subsection 20(1a).

Motion negatived.

The Chair: Mr Conway moves that subsection 20(1) of schedule 1 of the bill be struck out and the following be substituted therefor:

"(1) The amount of required contribution for an active member on LTIP is

"(a) 6.9 per cent of pensionable salary if the member becomes disabled before 1 January 1991; and

"(b) 8.9 per cent of pensionable salary if the member becomes disabled after 31 December 1990."

Mr Morin-Strom: I wonder if the minister could tell us the difference between this and the previous motion. I do not think it is quite the same. I know the minister thinks it is a response to the previous motion, but I do not think it is quite as strong as the previous motion.

The Chair: Ms Skelton, would you like to comment, please?

Mr Burton: If I may, Madam Chair, the effect of the NDP motion was to make 6.9 per cent the rate for members on LTIP permanently. We were advised by OHIP that during the next year the contracts for LTIP payments would be renegotiated and that for those disabled after 1 January 1991, those LTIP contracts will pick up 8.9 per cent. So the motion put forward by the government says that for persons disabled before that date, 6.9 per cent will be the amount charged or the amount of their contribution. After that date, because the insurance contracts will cover 8.9 per cent, that will be the amount.

The Chair: Is that sufficient, Mr Morin-Strom? Do you see the difference? Then are we ready to take the vote on this amendment to subsection 20(1) of schedule 1? May I consider that subsection carried?

Motion agreed to.

The Chair: Mr Conway moves that subsections 20(3) and (4) of schedule 1 to the bill be struck out and the following substituted therefor:

"(3) An active member on LTIP is required to give notice to his or her employer of an election under subsection (2) before 30 November in the year to which it applies.

"(4) An active member on LTIP shall give notice on the first day of each school year to his or her employer that the member continues to be an active member on LTIP."

Mr Morin-Strom: Generally, I think this one is okay, but there is some concern about why under subsection 3 the reference is only to "his or her employer" when in fact it may be more relevant to say "or former employer."

The Chair: Would you like to respond to that, Mr Conway?

Hon Mr Conway: It seems to be a good point actually.

Mr Morin-Strom: The employment may have been ended, I understand, in which case the relevant person should be the former employer.

The Chair: Do we have an amendment to the amendment with the addition of the words "or former employer"?

Mr Morin-Strom moves the addition of the words "or former employer" in the second lines of subsections 20(3) and (4) of schedule 1 after the word "employer."

Motion agreed to.

The Chair: Are you ready to vote on the amendment itself?

Motion agreed to.

The Chair: Now we have had several amendments to section 20 of schedule 1. Those who are for section 20 of schedule 1, as amended?

Mr Elliot: Is it customary to carry one like subsection 2, because we did not really say anything about that and we amended everything else?

The Chair: Well, I have called for a vote on the whole section as amended. If there are further questions about any of those subsections, please place them now.

Mr Elliot: I just did not want it carried with one section left out.

The Chair: No, I think I said the whole section as amended, and that is the way the vote was taken. Mr Jackson had an amendment there, but I guess it is no longer the 20.

Mr Jackson: The same as Mr Morin-Strom's.

The Chair: Okay. The next amendment that I have before me is to section 22 of schedule 1. May I consider section 21 of schedule 1 carried? Carried.

Subsection 22(3): May I consider subsections 22(1) and 22(2) carried? Carried.

Mr Jackson moves that subsection 22(3) of schedule 1 be amended by replacing that words "before the" in line 3 with the words "which is due."

Mr Jackson: Just briefly, it indicates that an individual who is late should not be disentitled, but that some agreement for charging interest be agreed to.

Hon Mr Conway: I appreciate the concern but I would not favour the amendment. I think it is important to have a finality, as it were. I think that by stretching out the period, quite frankly in my view it would make the situation more difficult for a number of the plan members who

might be on long-term income protection, so in general, for those reasons.

Mr Jackson: The minister has used the word "flexibility" about four times this evening and I was just wondering if I would catch him in that kind of a mood, but apparently not.

Hon Mr Conway: I should also add that section 109 provides that kind of flexibility with the administrator.

The Chair: Those who are for the amendment as presented by Mr Jackson? Mr Morin-Strom and Mr Jackson are for that. Those who are against it? Mr Conway, Mr Keyes, Mr Elliot, Mrs Fawcett and Mrs Stoner.

Motion negatived.

The Chair: May I consider section 22 as well as section 23, and that includes all the subsections of both of those sections? Those who are for those two sections being carried as presented in the bill? Carried. May I consider subsection 24(1) of schedule 1 carried? Carried.

The Chair: On subsection 24(2) of schedule 1, we have an amendment to be presented by Mr Conway.

Mr Conway moves that subsection 24(2) of schedule 1 of the bill be struck out and the following substituted therefor:

"(2) In addition to the amount required under subsection (1), the minister shall contribute four per cent of the pensionable salaries of active members on LTIP who become disabled before 1 January 1991."

Hon Mr Conway: This is the companion, is it not, of the earlier section?

The Chair: Any further comments, questions or discussions on this amendment to subsection 24(2)?

Mr Jackson: I can hardly find disagreement with it because it is the same one I tabled.

Motion agreed to.

The Chair: You would then withdraw what you have presented, Mr Jackson, on that particular clause? I have one here on section 24(2a) which I presume now is not going to be presented. May I consider subsection 24(3) carried? Carried.

The Chair: I have an amendment to subsection 24(4) of schedule 1.

Mr Conway moves that subsection 24(4) of schedule 1 of the bill be amended by inserting after "on the day" in the third line "before."

The Chair: There is an explanation on the bottom of the sheet.

Hon Mr Conway: Yes. This amendment clarifies that the interest on the minister's contribution is calculated to include the first day of the period but to exclude the day of payment. That day will be the first day for calculation of the following interest payment. It is a technical amendment to produce double interest payment for that one day.

Motion agreed to.

The Chair: I have another subsection 24(4a) with the addition of (a), (b) and (c) here. I presume, Mr Conway, you are going to read these in and present comments. Are you had ready, Mr Conway?

Hon Mr Conway: Let me just check.

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The Chair: I thought I had an amendment to subsection 24(4) with an addition of (a), (b) and (c).

Interjection: It is just (a) and (b).

The Chair: I am sorry. I am seeing double. Is that not terrible? I am looking at (a) and (b) and also seeing (c).

Mr Conway moves that section 24 of schedule 1 to the bill be amended by adding thereto the following subsection:

"(4a) Interest payable in respect of a period before 1 January 1990 shall be calculated,

"(a) up to that date, in accordance with the Teachers' Superannuation Act, 1983;

"(b) on and after that date, at the standard interest rate in effect on the 1 January 1990."

Hon Mr Conway: It simply is a technical amendment having to do with the transition and it clarifies the rules for interest pre-1 January 1990 and post-1 January 1990.

Motion agreed to.

The Chair: May I consider section 24, as amended, carried? Carried. May I consider sections 25 and 26 carried? Carried.

We now move to a motion that asks to strike out section 27, which again I will have to rule out of order. I think it is more appropriate to vote against it unless there is some substitution. May I consider section 27 carried? Carried.

May I consider sections 28 to 41, inclusive, carried?

The Chair: We are now turning the page 24 for an amendment that is being presented by Mr Jackson to subsection 42(1a). I presume this is an addition to section 42.

Mr Jackson: I move that section 42 of schedule 1 be amended by the addition of a new subsection to provide:

"42(1a) A member who has accumulated at least 10 years of credited service and who has attained the age of 60 years upon termination of employment is entitled to a retirement pension for the member's lifetime under subsection (4)."

Basically this was brought to us by the Federation of Women Teachers' Associations of Ontario because women would benefit because of broken service and retire at approximately the same time as their colleagues on a two per cent per year of credit pension. I was very much moved by those arguments and have put it in.

Hon Mr Conway: It is a very significant benefit improvement with very significant cost implications to, among others, the consolidated revenue fund and for that reason I would not favour it.

The Chair: Therefore, I will have to rule it out of order if the minister is not going to favour it, since it is a direction of funds.

Mr Jackson: Because the minister is not going to support it or because of—

The Chair: The minister has to move such a recommendation if it is a direction of funds.

Mr Jackson: I wish you were more sensitive to women teachers.

Interjection.

The Chair: It is not a money motion? I am sorry. I thought it was a money motion from what I heard the minister say when he talked about the consolidated revenue fund. I am sorry. Misinterpretation. Please correct me when I am wrong, which you do.

Mr Morin-Strom: The minister says it is a very significant cost. Perhaps the minister will tell us how much the cost is.

The Chair: That is the point upon which I was making my judgement.

Hon Mr Conway: Our calculation is that it would add to the unfunded liability in the neighbourhood of \$135 million.

Mr Morin-Strom: That one item?

Hon Mr Conway: Yes.

Mr Morin-Strom: Does the minister know there is another item which I guess is going to get ruled out of order as well in motions from both Mr Jackson and myself with respect to allowing full pension credit for anyone who has 35 years of credited service? I presume he is going to say that is very expensive too. I wonder if he has those figures.

Hon Mr Conway: I am simply telling you what I have said to you before, that the government is not prepared through this process

to entertain benefit improvements and these kinds of things, particularly this one. It is a very significant benefit improvement. I am not saying I do not understand the argument for it, but it is a benefit improvement, this one particularly, with very significant cost implications.

Mr Jackson: Can you tell us what the cost implications are for? It is hard for you since it has not been—

The Chair: Could I just do section 42. Now you have the cost implications. I have made a ruling that it is out of order with those kinds of cost implications.

Mr Jackson: Both subsections 42(1) and 42(2)?

The Chair: I am dealing only with subsection 42(1a) at this moment. That is all that is on the floor.

Mr Jackson: You have ruled it out of order. So now we are moving to subsection 42(2). Both Mr Morin-Strom and I have amendments.

The Chair: I just wondered if there were any more arguments you wanted to make. If there are none, we will move to subsection 42(2).

Mr Jackson: The chair's ruling is final in these matters. I accepted that. I was just trying to get on with the meeting.

The Chair: Okay. Sometimes I give the benefit of the discussion. We will go to 42(2) and (2a).

Mr Jackson: We have asked the minister if he could tell us what the costing is in subsection 42(2), as he suggests it would be out of order.

The Chair: Have you got this costing?

Hon Mr Conway: The cost implications of this are significantly lower, but it is none the less a benefit improvement and I have said earlier and I will repeat now that it will not be accepted for that reason.

The Chair: My ruling will be the same on this particular item. I guess there is no costing available on this one.

Hon Mr Conway: But it is much less. I do not have a precise figure, but it is none the less a benefit improvement.

The Chair: It is subsections 42(2) and (2a) of Mr. Morin-Strom's amendment we are talking to. Now I have ruled it out of order. Subsection 42(2), I presume, is somewhat similar, so I will make the same ruling. I will ask, may I consider section 42 of schedule 1 carried?

Mr Morin-Strom: No. I would like to have a discussion on the whole section.

The Chair: Please then. We have had a request for a discussion on section 42.

Mr Morin-Strom: The minister knows that—

The Chair: May I please have order. Mr. Morin-Strom would like to have further explanation on this complete section.

Mr Morin-Strom: This is the section that deals, as the minister says, with potential benefit improvements, particularly with respect to when one is eligible for collecting an unreduced pension.

Clearly from all the presentations we had before the committee, there is considerable concern that what is being asked is a one-way street. While the government is maintaining total and complete control over the plan, the members are expected to increase their contributions, but there is no quid pro quo in terms of any tangible benefit improvements to the members. The members feel that they are being treated unfairly with respect to having to pay more for a plan over which they have no control and for which mismanagement of the government has led to tremendous deficits over past years, and now they are asked to pay more for a plan that is not going to generate that income.

The Chair: Mr. Conway, do you have a response to that?

Hon Mr Conway: Briefly. I can appreciate the point the member is making and the point that has been made by many of the interveners in the earlier hearings. I do not accept the argument the fund has been mismanaged. I regret that very important and significant costly benefits that were arrived at 15 years ago were not and have apparently not been fully funded. I do not take any great joy in this exercise.

I do not take a great joy in conferring on the taxpayers of Ontario what is a multibillion-dollar obligation now because this plan, in terms particularly of the benefits it has conferred and has offered, and under the defined benefit plan must be paid—I take no joy in the fact the benefits that had been offered over the years have not been fully funded. I hope and expect that years from now there will not be a successor Legislature in this place ruminating about some kind of a deal that was cooked in 1989 by the then Legislature that created a very significant and predictable problem that some later generation is going to be expected to pay for.

I understand absolutely how it is that teachers would say, "Why am I being asked to pay an additional one per cent when there is no benefit that is attached to that?" All I have to say is:

"You've got a good plan. It has, as one of its benefits, full indexation. Do you know how important and how costly that is?"

2120

Mr Jackson: We are not here to sell the plan, Minister. We are here for a year and a half—

Hon Mr Conway: I am answering the question, Madam Chair.

Mr Jackson: Madam Chair, for a year and a half, we have heard this government use the language of mutuality.

Hon Mr Conway: Can I finish?

Mr Jackson: We have used the language of increased contribution and increased benefit. It was only last Wednesday when the government got to the garden gate that it dropped the hands of the teachers and all the participants and the pensioners in this room. That is what has happened and you know that is what has happened.

The Chair: Mr. Jackson, you have—

Mr Reycraft: You are ignoring the reality of the fund.

Mr Jackson: That is separate and distinct from the way this whole scam has been played. That is what we are talking about. That was what the question was about. We are talking about how this has been played out and you know the way this has been played out.

The Chair: Mr. Jackson, you are out of order. You asked the minister to respond. I thought I let you have a brief interjection, but you certainly went much further than I expected. Minister, would you want to continue any further?

Hon Mr Conway: I just want to observe that I do not recall throughout the piece there being any discussion about significant or insignificant benefit increases in this process. I think there has been a very real understanding by many, if not everyone in the debate, that this plan is in trouble and that the trouble has to be dealt with. This reform has implications, not just for the active plan members but very significant implications for the government and the people of Ontario.

I only reiterate the earlier point that we have conferred a benefit, a very valuable benefit, one that is highly prized and rightly so, that has not been adequately funded. That significant measure is why we are into this exercise. There are other aspects, but I feel that part of my responsibility must be to those teachers who under this plan expect the plan to deliver what they expect it to deliver. If we do not make some change, that is not easily going to happen.

I wish I could come before the committee and say, "Listen, there are all kinds of benefit improvements we can make." Like many of you, I sat through the debates in the early 1980s. I do not remember a debate that was quite as alive as the one about where you were, on which side of the 31 December 1982 divide you found yourself.

It has been one of the most protracted and painful discussions about how it is some people got the best five and others got the best seven, and those are the kinds of debates that obviously arise around any kind of benefit improvement.

Enough said. I just want to make the point again that we are not here to discuss benefit improvements. To be fair, the government, I think—correct me if I am wrong—has been fairly consistent throughout the piece. I have only been Minister of Education for the last four months of the piece, but I do not—

Mr Jackson: There has never been discussion for about a year and a half about improving benefits.

The Chair: Mr. Morin-Strom, you asked the question when we began this. You wanted further discussion on section 42. Do you want to continue? Have you heard enough from the minister at this moment on this subject?

Mr Morin-Strom: I think I have made my point with respect to some of the concerns we have heard from teachers and their representatives who appeared before the committee and feel they are being penalized and are getting no control, no say in the management of the pension plan. They do not feel there is anything in this for them.

The Chair: Thank you for the statement. We still have not yet taken the vote on section 42. May I consider section 42 carried? Carried.

We are now beginning section 43 and I have an amendment to subsection 43(2). May I consider 43(1) carried? Carried.

Okay. We are now at—again, it looks like a technical motion and I, at the moment, cannot—

Mr Morin-Strom: I will withdraw mine because it presupposes that the motions on section 42 would have passed. They were a formula for calculating pensions assuming that the new credit service that was proposed under section 42 by both opposition parties would have pass.

The Chair: Thank you very much, Mr. Morin-Strom. Mr Jackson, you also have an amendment to 43(2).

Mr Jackson: It is withdrawn for the same reason.

The Chair: Thank you. We have a long way to go here now before we come to the next amendment, which is in section 78. If I may ask you to bear with me, may I consider sections 43 through 77 carried? Carried.

The Chair: The amendment I have before me is to subsection 78(2) of schedule 1. May I consider subsection 78(1) carried? Carried.

Mr Conway moves that subsection 78(2) of schedule 1 to the bill be amended by striking out "year" in the third line and inserting in lieu thereof "month."

The explanation is at the bottom of this page.

Hon Mr Conway: Yes. This simply allows the inflation adjustment to be calculated for part of a year where a member ceases employment in the middle of a year.

Mr Morin-Strom: I have not seen the amendment. Where is this amendment?

The Chair: You have not got it?

Mr Jackson: It was in the original government package last Wednesday.

The Chair: I guess I am having the same difficulty as the rest of you.

Mr Jackson: It may have been missed in collation because it is in my package. I have tabled my own.

The Chair: It is an old one because I have it underlined. Everything from last week was underlined; things tonight were not. So I know it was passed out to us last Wednesday. Collating these things does take an extra skill that maybe all of us are not—

Mr Jackson: We can blame it on technology.

The Chair: Any further discussion on this? May I consider this amendment carried, subsection 78(2)?

Motion agreed to.

The Chair: Mr Jackson's motion dealt with the same.

Mr Jackson: It is identical so there is no need for it.

The Chair: If I may then, may I consider section 78, as amended, carried? Carried.

We now go then to section 79 and I have an amendment to subsection 5. May I consider subsections 79(1), (2), (3) and (4) carried? Carried.

Okay, we are on to page 40, subsection 5.

Mr Jackson moves that subsection 79(5) of schedule 1 be amended by addition of the words "in a school year" after "21" in line three.

Would you like do speak to that, Mr Jackson?

Mr Jackson: Briefly. It just deals with a return to employment during a deferral period. It permits an individual to be employed for up to 20 days in a school year without interrupting his indexation.

Hon Mr Conway: I agree.

Motion agreed to.

The Chair: Section 79 then seems to be complete. May I consider section 79, subsections 1 through 5, as amended, carried? Carried.

We will move on to section 80. My first amendment is to subsection 4. May I consider subsections 1, 2 and 3 carried? Carried.

Let's look at this one. Mr Jackson, please.

Mr Jackson: I move that subsection 80(4) of schedule 1 be amended to provide:

"(4) The amount is the average of the year's maximum pensionable earnings for the year in which the member ceases to be employed in education or the year in which the member reaches 65 years of age, whichever is earlier, and for each of the two preceding years."

Hon Mr Conway: From our point of view, this is a benefit improvement and therefore not acceptable.

2130

The Chair: I will then have to consider it out of order.

May I then ask if I can consider section 80 carried? Carried.

The next amendment I have is to section 88, so may I consider carried sections 81, 82, 83, 84, 85, 86 and 87. Carried.

The next amendment deals with subsection 88(2). May I consider subsection 88(1) carried? Carried.

Mr Conway moves that subsection 88(2) of schedule 1 of the bill be struck out and the following substituted therefor:

"(2) For 1990 the standard interest rate attributable to a transaction is the weighted average effective annual yield of the debentures held by the teachers' superannuation fund under the Teachers' Superannuation Act, 1983 as at 31 December 1989."

Hon Mr Conway: Again, this is a technical amendment that clarifies that the interest being spoken of here is that for 1990, not payable during 1990.

Mr Jackson: Can the minister inform us of what that rate is right now?

Ms Skelton: No. It has to be calculated on 31 December and it is the standard—

Mr Jackson: Approximately what is it at the moment then?

Ms Skelton: The fund is earning at the moment between 11¼ and 11½.

Motion agreed to.

The Chair: May I consider section 88, as amended, carried? Carried as amended. No, I think I am supposed to say, "As amended, carried." It is getting very hard to be very accurate, and we must be accurate.

On to sections 89, 90 and 91, to which I have no amendments. May I consider them carried? Carried.

We are now at section 92. The first amendment I have is to subsection 4. May I consider subsections 1, 2 and 3 carried? Carried.

Mr Jackson, please.

Hon Mr Conway: Just pardon me, are we in section 92?

The Chair: We are in subsection 92(4).

Mr Jackson: There are no other amendments.

The Chair: You may strike out a subsection, so if you want the speak to this, read it into the record and speak to it.

Mr Jackson: I will put it on for the record anyway.

The Chair: Mr Jackson moves that subsection 92(4) of schedule 1 be struck out.

Mr Jackson: I was concerned that this was not included in the government's original bill. Perhaps the government would like to speak to the reason why it is included. I hope you will be speaking against my motion.

The Chair: I guess there has been an addition that was not in the original presentation, and Mr Jackson would like to know why. I presume it is subsection 92(4).

Mr Jackson: It deals with time limitations for purchase of credited service.

Ms Skelton: It was simply an error in the original bill. It should have been there.

The Chair: Do we want to take a vote on this?

Mr Jackson: As I understand it, this places a time limitation.

Ms Skelton: That is correct. It places a time limitation on payments under the old system. The change to the purchase-of-service provision comes into effect in 1992. There is a time period for people to complete their purchases under the old system. Then the new system comes into play. What subsection 92(4) does is set an end date for making payments under the old system.

Mr Jackson: The minister is comfortable with a two-year window only?

Hon Mr Conway: Yes, obviously.

Mr Morin-Strom: Was there a time limit previously?

Ms Skelton: In the old system?

Mr Morin-Strom: Yes.

Ms Skelton: No.

Mr Morin-Strom: The minister made—

Ms Skelton: Are you talking about under Bill 41 or under the Teachers' Superannuation Act?

Mr Morin-Strom: I am talking about the ability to purchase credited service.

Ms Skelton: Ability to purchase credited service under the Teachers' Superannuation Act did not have time limits other than you had to complete purchases before collecting a pension.

Mr Morin-Strom: We have heard the minister complaining about some of the motions we have put forward, that we or the teachers' federations that made presentations have been asking for benefit improvements. Now this is exactly the reverse. This is the minister taking away a right that members had previously. You are putting a time limit on how quickly they can come up with the dollars to be able to purchase for past service. This is a case where you have gone in and you have changed the rules. They previously could purchase for lost service at any time during their career. They had to pay interest on that service, so it cost more the longer you waited, but in a case where a person had the difficulty in doing so, he could make that decision and that rate was still available. Now you want to put a limit on it and force them to come up with the cash within a certain number of years. If they cannot, they lose permanently the right to purchase that service.

Hon Mr Conway: You are right to this extent, in that we are changing the old order and we will quickly get into the new regime, which I think is more equitable. It is more easily administered and, I hope, less costly for all concerned.

Mr Jackson: It is certainly going to be less remunerative to the people who have contributed to this plan.

Hon Mr Conway: It just seems to me that if you are going to establish a new regime you want to terminate the old, and I do in this particular case.

Mr Jackson: We generally do that at election time—

Hon Mr Conway: That is true.

Mr Jackson: –but not with pensions. We are talking about a basic issue of rights here, and it just strikes me that you are going to get all sorts of cases, for whatever reason, of people who did not purchase. God knows, they will all be clamouring to Liberal members to see if there can be some flexibility in it. What are you going to say? Are you going to say, “It’s always been that way”? That is probably what you are going to say.

Hon Mr Conway: Listen, I do not hold up the past regime as any model of efficiency, simplicity or equity. I just happen to believe we can do better. Yes, the old order—

Mr Jackson: You cannot even be charitable on this point.

Hon Mr Conway: I think that the sections that we are going to move to, hopefully soon, will indicate a better way. We will talk about that under those provisions.

Mr Jackson: Is the minister at least acknowledging that this is a loss of a benefit in the manner in which that clause is written?

Hon Mr Conway: Pardon me?

The Chair: Is there a lost benefit in the way in which the clause is written?

Hon Mr Conway: Is there a lost benefit?

Mr Jackson: Is there any loss to the pensioner because of the wording that you have included, in your mind?

The Chair: You are asking, is it going to be any different?

Mr Jackson: We know it is different.

The Chair: Is it a loss?

Mr Jackson: I am just trying to find out if the minister acknowledges that this is a reduction in a right, that the flexibility that the plan has was an option that was a benefit to the employee and not necessarily to the employer and that it now will be lost.

Hon Mr Conway: Undoubtedly there will be some people who will be adversely affected by the loss of these provisions. There is no question about that. I am sure that is true, but I just have to think that the new order will overall be much better for all concerned.

Mr Jackson: It is beginning to sound more and more like Napoleon on the fourth estate.

Hon Mr Conway: “Better” is probably the wrong word; it would be much fairer. To the extent people are concerned about fairness, I think the new order is fairer.

The Chair: Are we ready to take the vote?

Mr Morin-Strom: The minister makes this blanket statement that it is fairer. How is it fairer? If you lose the right to be able to purchase lost service credit, how is it that fairer?

The Chair: Would you like to attempt to answer that, Mr Conway? You need a little bit of coaching here, I guess.

2140

Hon Mr Conway: One of the points that staff have reminded me of is that the old buyback provisions quite frankly have been such that they quite often involved not just the individual buying back. The plan or the other plan members are, in effect, subsidizing some of that buyback because the buyback provisions are not in and of themselves for the individual involved covering the cost. The new rules are going to, in a sense, be fairer because they are going to provide, I hope, a better discipline, make people make choices. As it has been in the past, the other active plan members have in fact borne some of the costs of the buyback.

Mr Jackson: They do not call it a cutoff for nothing. I will rest my case.

Mr Morin-Strom: The minister claims that he wants to cut off the old order here and give a limit for the purchase of credited service to which a predecessor act applies. Are you going to give them unlimited time to be able to purchase under the new rules or are you limiting that as well?

Hon Mr Conway: Under the new rules, there is going to be a wider range of options.

Mr Morin-Strom: Is there a time limit?

Hon Mr Conway: No.

Interjection.

Hon Mr Conway: That is right. There is a time limit. Ms Skelton is just reminding me.

Mr Morin-Strom: So there is a two- or three-year time limit?

Hon Mr Conway: Yes, the rules are, I think, quite clear on that. Remember, these buyback provisions are not without some cost. I am just assuming that—

Mr Morin-Strom: I do not understand why there is cost in the buyback provisions when, as I understand, the interest rate that you have—what is the difference between buying at one point or waiting 10 years and buying 10 years later if what you have to pay is the interest that has been earned on the fund? What is the impact on the fund if you buy back in 1990 and have the money in the fund and earned what the average return on the fund has been till the year 2000 or if you buy

in 2000 and agree to pay the interest that has been accumulated up to that point? What is the impact on the fund one way or the other?

The Chair: Ms Skelton, would you please try to answer that?

Ms Skelton: The primary difference here is that if the individual is paying single contribution plus interest, then the government has to be matching that; if the government is not matching it, the fund is paying the matching contribution. Where the time limits exist in the new provisions are the time limits for paying single contributions plus interest to the fund. During that period the government will match the individual's contribution to the fund.

What we are saying is there is a time limit on the period when the government will match the contribution. If you will not make that decision when you initially come back and within a given time period, then you will have to pay the full cost of the benefit improvement. That is the reason for the time limit.

Mr Morin-Strom: So it is not an unfairness with respect to the fund having to do with the amount that the individual pays in or what the return is on that. It has to do with the government's unwillingness to continue to match those funds beyond a certain point.

Ms Skelton: In the new rules that is true. If you are looking from the old rules to the new rules, you have got a difference between the way the rules play out and a bunch of different sets of rules in place, and what we are saying is you cannot take advantage of two sets of provisions at once. That would simply allow you always to pick the thing that was cheapest for you and most expensive for either the fund or the government.

The Chair: Any further questions on this amendment, subsection 92(4) being struck? Are we ready for the vote on that?

Mr Jackson: Just one point: It is interesting that if the government still holds out hope that some day in the future there will be a joint plan, it is presupposing that will not occur until some time after 1994.

The committee divided on Mr Jackson's motion, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 3; nays 6.

The Chair: As we go onwards, I do not think there are any further amendments to section 92. May I consider section 92 carried? Carried.

We are now into section 93. I have an amendment to subsection 1. It is a government motion.

Mr Conway moves that subsection 93(1) of schedule 1 of the bill be amended by adding thereto the following definition:

"'return date' means the date determined under subsection (8)."

Hon Mr Conway: I think it is clear.

Motion agreed to.

The Chair: I do not have anything for subsection 93(2). May I consider it carried? Carried.

Mr Jackson moves subsection 93(3) of schedule 1 be amended to provide:

"(3) An active member may purchase credited service under this section,

"(a) if the member was an active member employed in education for a period equal to 20 days of full-time employment before beginning the first such absence of break in service; and

"(b) if the member completes 70 days of credited service at any time after the member returns from the latest absence or break in service for which credited service is being purchased."

Mr Jackson: I think it is self-explanatory.

Hon Mr Conway: Again, I would not favour this. I think there has to be a longer period of participation than the 20 days. The amendment suggests 20; the bill suggests one year. I favour the latter and not the former.

The committee divided on Mr Jackson's amendment, which was negated on the following vote:

Ayes

Allen, Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: I now have one amendment to subsection 93(4) to be presented by Mr Jackson.

Mr Jackson: I am just making sure it is still valid in light of my previous one being passed, and I think it is.

2150

The Chair: Mr Jackson moves that subsection 93(4) of schedule 1 be amended to provide:

"(4) An active member may purchase credited service for all or part of an absence or all or part of a break in service authorized under subsection (2)."

Mr Jackson: The government has had this amendment for a week and a half.

Hon Mr Conway: The concern I have is with the last three words, "authorized under subsection (2)." Could you live with an amendment that would strike or delete from the amendment "authorized under subsection (2)"?

Mr Jackson: Yes, I would.

The Chair: So you are withdrawing the last three words of your amendment. Is that correct?

Mr Jackson: "An absence or all or part of a break in service." Correct?

The Chair: That is the way you are presenting it now, Mr Jackson?

Mr Jackson: It is the minister who is suggesting something.

Hon Mr Conway: Yes. If you delete that, then that is quite acceptable.

Mr Jackson: Then, for Hansard, I amend my amendment by deleting the words "authorized under subsection (2)."

Motion agreed to.

The Chair: May I consider this subsection 4 carried? Carried.

We now have subsection 5. May I consider that carried? Carried.

I have a rather extensive government amendment to subsections 6, 7 and 8.

Mr Conway moves that subsections 93(6), (7) and (8) of schedule 1 to the bill be struck out and the following substituted therefor:

"(6) An active member who elects to purchase credited service on or before the first anniversary of the member's return date shall contribute,

"(a) an amount not greater than the sum of the required contributions the member would have made if the member were not absent, based upon the pensionable salary that the member's employer advises the administrator that the member would have earned; and

"(b) interest thereon from the date of each contribution would have been made ending on the day it is paid.

"(7) A contribution under subsection (6) shall be paid as a lump sum,

"(a) before the fifth anniversary of the member's return date from an absence or break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or

for the purpose of caring for the member's child under seven years of age; and

"(b) before the third anniversary of the member's return date, for an absence or a break in service not described in clause (a).

"(8) A member's return date following an absence or break in service is the member's 21st day of employment in education in the first school year during which the member works more than 20 days following the absence or break.

"(8a) A contribution under subsection (6) is considered to be a required contribution for the purpose of sections 24 and 25.

"(8b) A member who elects to purchase credited service after the date described in subsection (6) or who fails to make a payment before the due date under subsection (7) shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement."

Mr Morin-Strom: Can we get an understanding what the minister is trying to do here?

The Chair: What are your goals here, Minister?

Hon Mr Conway: I will let Janet speak to that.

The Chair: Ms Skelton, are you going to be able to present us with this in 25 words or less?

Ms Skelton: In 25 words or less, it means that somebody who is on a leave or at home raising children can go back to school to teach on an occasional basis for up to 20 days in any year without the clock starting to tick on his or her time limits for purchase of service on a single contribution basis. Your year does not start to tick until day 21. That is the first part of it.

The second part says that in terms of time for that purchase to take place, while it is generally within three years of return for single contribution, in the case of parental leave it becomes five years of return. So it recognizes that people coming back from being away with children probably have not been able to plan as well in terms of pension repayments.

Motion agreed to.

The Chair: May I consider subsections 9, 10, 11, 12, 13, 14, 15 and 16 carried? Carried.

Those are the subsections to which I had no amendment. I do, however, have another government amendment, to subsection 93(17).

Mr Conway moves that subsection 93(17) of schedule 1 of the bill be struck out.

Hon Mr Conway: This is technical inasmuch as it has been replaced by subsection 93(8a).

The Chair: Which we have just attended to?

Hon Mr Conway: That is right.

Motion agreed to.

The Chair: I do not have another amendment before section 96. It is getting very close to the hour we agreed. May I consider sections 94 and 95 carried?

I am sorry, I forgot to ask for the vote on that large section we have just dealt with. May I consider section 93, as amended, carried?

Mr Morin-Strom: May I ask a question on section 93?

The Chair: Do you want to go back to section 93 for a second?

Mr Morin-Strom: The explanation on subsection 93(17) was that it was covered under subsection 93(8a)?

The Chair: Yes, under subsection 93(8) as amended; we amended that section.

Mr Morin-Strom: I thought subsection 93(8a) only refers to certain types of absence as opposed to subsection 93(17) which applied to the whole section and any type of absence under the whole section.

The Chair: Ms Skelton, would you like to give an explanation?

Ms Skelton: Subsection 17 was simply incorrect. Wherever it says "required contribution," the government has to match. In the provisions where the individual pays full cost, the government should not be matching. The fund would get too much money. So the amendment simply refers to the sections where a member makes single contributions plus interest that the government then matches. It matches any required contribution.

Mr Morin-Strom: So this is the only type that it applies to?

Ms Skelton: Yes, that is right.

The Chair: I hope that Hansard will kind of put that all in order because I know that is the way we would want it. We had discussion after we took the vote and we were voting on sections 94 and 95 before section 93 as amended. Surely they will make allowance for us. I would humbly suggest that we adjourn tonight's meeting unless you have further questions before section 96.

Mr Jackson: No, I have still my outstanding request to have all or any of the balance of the government's amendments before we leave tonight. That is it? There are no more amendments from the government other than the ones that were tabled? I have the minister's assurance.

The Chair: That seems to be the answer we are getting at this moment. Of course, people do sleep and then they do wake up and they may have some new lights.

Mr Jackson: The fact that we have got government amendments within 72 hours of the bill being proclaimed is a matter for consternation in and of itself, but surely you are not suggesting that people might go home and dream more amendments up on the side of your government for this bill, Madam Chair?

The Chair: I do not know. I know what transpired tonight and I think that, because we had unanimous consent on all of those, they were good amendments. I would not want to say that there was no possibility for any further amendment ever from the government side, because I think that would be very unfair to the whole process.

In any case, if I may, we will all begin at the same place, on page 46, section 96, tomorrow when we return. That will be at 3:30 or as close to that as possible with our House duties. I will now declare that this meeting is adjourned.

The committee adjourned at 2203.

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From the Ministry of Treasury and Economics:

Watson, Robert J., Director, Finance Operations Branch

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Teachers' Pension Act, 1989

Second Session, 34th Parliament

Tuesday 19 December 1989



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Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 19 December 1989

The committee met at 1546 in room 151.

TEACHERS' PENSION ACT, 1989 (continued)

The Chair: May I now call to order the meeting of the standing committee on social development as we proceed through Bill 66 clause by clause. I would ask Mr Jackson to present the first amendment today. It has to do with subsection 96(2) and that will be found on page 46 of the bill.

Schedule 1:

Mr Jackson moves that subsection 96(2) of schedule 1 be amended by deleting the word "70" in line 2 and replacing it with the word "20".

Mr Jackson: This amendment will permit members who are absent because of religious holidays to purchase credit on the plan once they have been employed for 20 days as opposed to one year.

Mr Morin-Strom: I have not seen the amendment.

The Chair: I think it is one that I have had, although it may not be. I do not know how long I have had this one.

Mr Morin-Strom: It does not seem to be in this package of stuff. What is the purpose of this amendment?

Mr Jackson: As I understand it, it is part of an adjustment in calculation which previously would deny certain religious holidays. Now they will be included for calculation. It is the removal of a penalty that is seldom raised but that is raised.

Ms Skelton: Could I perhaps clarify what the section is? The section we are discussing here is the section where a member who has cashed and returned to teaching can buy back that service and the provision in the bill says that they must work 70 days to be eligible to repurchase. The intent obviously is to ensure that they are really rejoining the teaching profession, not just coming in to buy service. The provision to 20 days obviously reduces that obligation.

The Chair: Any further comments, questions? Ready for the question on this amendment? Those who are for the amendment as presented? Are we asking for recorded votes

here? When you raise your hands, you seem to be.

Mr Morin-Strom: Sure.

The committee divided on Mr Jackson's amendment, which was negated on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Faubert, Fawcett, Keyes, Reyecraft.

Ayes 3; nays 5.

The Chair: I do have several other amendments to this particular section. I have not dealt with subsection 1, but I will do that as we complete this section.

The next amendment I have is to subsections 96(5), (6) and (7), a government motion.

Mr Conway moves that subsections 96(5), (6) and (7) of schedule 1 to the bill be struck out and the following substituted therefor:

"(5) A contribution under subsection (3) shall be paid as a lump sum before the later of the third anniversary of the member's return to active membership and 1 January 1995.

"(6) A member who elects to purchase credited service after the deadline referred to in subsection (3) or who fails to make the payment before the deadline in subsection (5) shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement."

I presume that passage at the bottom is an explanation.

Hon Mr Conway: Yes. This is intended to clarify. Janet, do you want to maybe just—

Ms Skelton: The change in subsection 96(5) is to add "1 January 1995" so that there is a start-point deadline. We have removed the required contribution in total because when you are reinstating a refund the government's contribution is already there. The final change is the actuarial definition change that we have made in a couple of places already and will make in a couple more.

Mr Morin-Strom: This seems to be addressing again a section where the government is trying to limit the rights of teachers to buy back

past service. In this case we are limiting it to three years.

Ms Skelton: Three years at the amount they cashed. They can just reinstate. If they do not do it within the time limit, they can still purchase, but it is at the actuarial cost of the benefit improvement.

Mr Morin-Strom: So the cost will be higher if they wait more than three years?

Ms Skelton: Yes.

Hon Mr Conway: To them it will. Otherwise, you see, it is a cost borne by the plan, by everyone. What we are trying to do here is make people choose. I think it is not unreasonable. There is a three-year period, and if people choose not to make the election during that time and make it later, then yes, they will pay the total cost.

Mr Morin-Strom: I would like to express our concerns about limiting people's rights to buy back past service. The plan previously allowed the buyback of past service essentially on an unlimited basis as long as you stayed in the profession.

For those who may have a serious difficulty in coming up with the cost of buying back the past service, in this case forcing them to pay a lump sum, this seems to be a case where the government is imposing a difficulty. It is changing a provision in the pension plan to the disadvantage of teachers in the province, not only in comparison with what they have but to an extent beyond what was demanded in the Public Service Superannuation Act, wherein public servants are being given a longer period of time, up to five years, to buy back past service. At that time the service does not have to be bought back at a lump sum, but can be bought back under an amortization schedule with the payments spread over 10 years, as an amendment was accepted to the public service pension act. So the difficulty of coming up with a large lump sum payment to be able to buy these kinds of past credits is, I think, putting an unfair burden on teachers in the province.

Mr R. F. Johnston: I would like to know why we are not going to treat the teachers in the same fashion as we are the public servants. I wonder if the minister will remember what happens to a member of Parliament or the Legislature who, upon defeat, returns and wants to buy back in and if there are any similar limitations on us when we come back. There are not.

Hon Mr Conway: My memory is that the member for Sault Ste Marie (Mr Morin-Strom) is

right. There is a longer period of time in the Public Service Superannuation Act for purposes of buyback, but taken as a whole—and correct me if I am wrong, Janet—the total package of buyback opportunities under the teachers' plan is more generous than under the public service superannuation fund. I cannot speak for the Legislative Assembly retirement allowances plan; I would defer to others.

Mr R. F. Johnston: Oh, I certainly can. There is no penalty for us at all. You can just buy back the entire package that you were out for. I remember when that strange anomaly happened—Mr Faubert will be familiar with it—when Mr Warner decided to take a small vacation from this place until next year some time.

Mr Faubert: Probably permanent.

Mr R. F. Johnston: He did that once before as well. When he arrived back with those notable words that you will recall, "Mr Speaker, before I was so rudely interrupted," he was able to buy back the entire pension that would have been lost during that period. I think if that is what we want for ourselves, we should surely wish it for others as well.

The Chair: Any further questions? Are you ready for the vote on this? Those who are for the amendments as presented for subsections 96(5), (6) and (7). Those who are for that, please: Conway, Keyes, Reycraft, Faubert, Stoner. Those who are against.

Mr R. F. Johnston: Is this a recorded vote? Did somebody ask for that?

The Chair: No. But people started to put their hands up, and when you do that, I record the vote.

Interjection.

The Chair: Well, we just consider that complete.

There's nothing further to section 96. May I consider section 96, as amended, carried? Carried.

I do have an amendment to section 97 as well. It is to subsection 4. May I consider subsections (1), (2) and (3) carried?

Mr Jackson: No. I have a question.

The Chair: We will leave it then till we make the amendment.

Mr Jackson: I am just interested. As I understand the way the bill is written now, this section deals with an active member purchasing credit service for a period of teaching outside Ontario and then it refers to the minister approving of the service. Where does the

minister speak to that, to the criteria, and what assurances do we have that you have some stability in this area?

The Chair: Mr Conway, what are your criteria?

Hon Mr Conway: My officials tell me that there is a set of administrative criteria that govern this provision. If you would like to know more, I will be quite happy to defer to them.

The Chair: Have you got those handy, Ms Skelton?

Ms Skelton: No, I do not have them with me, but they are for equivalent types of teaching on projects abroad. This relates to foreign service projects when you go abroad, not to teaching abroad before you enter the teaching profession here.

Mr Jackson: It talks about outside of Ontario; is this outside of Canada or outside of Ontario?

Ms Skelton: It will apply to both.

Mr Jackson: It applies to both?

Ms Skelton: Yes.

Mr Jackson: So we are dealing with teachers who have taught in other provinces?

Ms Skelton: Who go on a project of some sort in another province or somewhere else in the world.

Mr Jackson: I have the difficulty that someone might leave with one set of approvals and return with another set of approvals when it is not in legislation, but I will leave it at that. I am just surprised the minister was not more fully aware of it.

The Chair: These are basically exchange teachers? Would that be the largest group of them?

Ms Skelton: Exchanges or abroad. Quite a few people go on Canadian International Development Agency projects and that kind of thing.

The Chair: Mr Conway moves that subsection 97(4) of schedule 1 of the bill be struck out and that the following be substituted therefor:

"(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement."

Hon Mr Conway: That is a just a technical amendment to clarify the intent.

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The Chair: Questions, comments? That is sufficient, is it, Mr Johnston?

Mr R. F. Johnston: It must have clarified things, if I understand it.

The Chair: Okay. Ready for the vote on this?

Mr Jackson: You repeat that in subsection 102(2).

Ms Skelton: It is repeated in each section in which there is an actuarial cost definition. That change is being made in all of them.

Motion agreed to.

The Chair: May I consider section 97, as amended, carried? Carried. The next amendment I have before me is to section 101, so may I consider sections 98, 99 and 100 carried? Carried.

On section 101, I have an amendment to subsection 4. May I consider subsections 1, 2 and 3 carried? Carried.

Mr Conway moves that subsection 101(4) of schedule 1 to the bill be struck out and the following substituted therefor:

"(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement."

Motion agreed to.

The Chair: May I consider section 101 of this bill, as amended, carried.

I do have an amendment to section 102.

Mr Jackson moves that subsection 102(1) of schedule 1 be amended to provide:

"(1) An active member may purchase credit service for employment not otherwise described in this part."

Hon Mr Conway: It is not acceptable on the grounds that it offends the Income Tax Act.

Mr Jackson: Could we get a more clear explanation of that? That is not necessarily the information that—

The Chair: Would you please explain further, Mr Conway?

Hon Mr Conway: It must be prior pensionable service.

Mr Jackson: You have got a letter from the federal government indicating that you cannot entertain this kind of motion? We talked about this earlier when the government was in the process of amending and you said you were unwilling to entertain it at this time. I just want a clearer understanding of this.

Hon Mr Conway: I have very learned legal staff who inform me that this is so.

The Chair: Those who are for this amendment?

Mr Jackson: Why don't you just rule it out of order, Madam Chair.

The Chair: I am not sure that it is in the same category as the general revenue fund or consolidated revenue fund.

Mr Jackson: If it is illegal to do it and it gets passed, then—

The Chair: It is not out of order, so I am not going to make a ruling that I cannot substantiate with the rules of order. I think we have to vote against it if we do not want it and for it if we do. That is what I am calling for now.

Those who are for this amendment as presented?

Do you want a recorded vote or not?

Mr R. F. Johnston: No.

The Chair: Okay. Those who are against it? Motion negatived.

The Chair: Last night recorded votes seemed to be much more in your wishing.

I have another amendment to section 102, but this time to subsection 2.

Mr Conway moves that subsection 102(2) of schedule 1 to the bill be struck out and the following substituted therefor:

“(2) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.”

Questions, discussion? I had comments already from Mr Johnston.

Mr R. F. Johnston: I think we can let this one go.

The Chair: Anything further on this then? Motion agreed to.

The Chair: I have another amendment to section 102, which is an addition and has been numbered as section 102a by Mr Jackson.

Mr Morin-Strom: Do we get copies?

Mr Jackson: In the package.

Mr Morin-Strom: I do not know. I seem to have run out.

The Chair: I presume that has been distributed to everybody. I am sorry if that is not the case. Has everyone got this?

Mr Keyes: Yes.

Mr Morin-Strom: Could we get another set of the balance of all of them?

The Chair: You must have just not picked up that particular package. We have an explanation that may be satisfactory—just so you do not feel left out, Karl—that apparently not every package had every motion. At least this is what our research staff is telling me. So you got one that was a little thinner than the rest of us.

Mr R. F. Johnston: It was a good check to see who is reading and who is not.

The Chair: Mr Jackson moves that section 102a be added to schedule 1 to read:

“102a. A member who has taken a refund of contributions from the pension plan and who becomes, in respect of a period of 20 or more days in a school year, an active member of a pension plan in respect of which there is a reciprocal agreement in force under this act that permits service under this act to be taken into account for the purposes of the calculation of a benefit upon the transfer of funds from the fund, may be reinstated to the fund without being employed in education upon payment into the fund of the amount required under section 92, but the reinstatement shall be for the purpose only of a transfer of credits under the reciprocal agreement.”

Mr Jackson: All of which really talks to the issue of affordability and I would like to see if the government would support that.

Hon Mr Conway: I would like to hear a little more from Mr Jackson. When I look at this amendment, I am not disposed to favour it because it appears, on the basis of the language, to have as its object really only one thing, and that is, the way I read this, simply to allow a former member to move the contributions back into this fund for almost the sole purpose of moving them back out again.

The Chair: Is that your intent, Mr Jackson?

Mr Jackson: If that is the way he reads it legally, then he can either correct it or draw his inference. All I am suggesting is that the pension plan should contain elements of affordability that presently are not clear or are not supported. This, in my understanding, will allow the pension plan members to re-establish themselves in the plan a little more easily.

As I look to the future with some of the reciprocal agreements that might emerge with some creative things you will be doing with skills development, early childhood education and community colleges, I can see that this whole area should be opened up in terms of making it more accessible for people leaving those related but not necessarily similar jobs, back and forth in teaching.

Hon Mr Conway: I think the objective is far better met through reciprocal arrangements. My worry with something like this is that you would run the risk, a very real risk, of having potentially a very one-sided transfer. I think to do what you want to do is better done through a reciprocal

arrangement. That would be the way I would suggest we deal with it. I think this opens it up to all kinds of potential that I do not think you or plan members would really want.

Mr R. F. Johnston: Do I understand that you are open to the kind of amendment that would create that kind of reciprocal action? If so, can we stand this down and put our heads together to see if that can be arrived at?

Hon Mr Conway: There are reciprocal agreements and they exist now. They could certainly, as I understand it, consider a variety of possibilities under the terms of their reciprocal arrangement. But the way I read this, this would be open. The intentions may be quite otherwise, but the way I read this, one could imagine somebody who had been a former member of the plan who moved out and now moves back, not for anything other than just simply to move right back out again. That is not something I would condone.

The point the member has made about the need for flexibility and reciprocity is something that I think is understandable. I would simply suggest that you do it through reciprocal arrangements.

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Mr Reyecraft: While Mr Conway is getting an answer, I wonder if I could ask Mr Jackson to indicate to us if he has a specific group in mind who would be affected by this amendment. I am trying to figure out how it would work and I am at a bit of a loss.

Mr Jackson: No, I do not have a specific group in mind.

The Chair: Thank you. Did you want to place your question, Mr. Morin-Strom?

Mr Morin-Strom: There is consultation going on here.

Hon Mr Conway: I think that to leave this is to invite situations that you do not want, and situations, quite frankly, that could be costly to the plan.

Mr Jackson: You have had two weeks to study this amendment and you have provided—

Hon Mr Conway: I am not favouring it for that reason, that is all.

Mr Jackson: That is obvious. You are not offering any alternative language to allay your fears. It is something you do not support. I think it speaks to affordability and I would be more anxious to see some elements of that, since it is a standard the government is encouraging for the private sector.

Mr Morin-Strom: How many reciprocity agreements do you have now?

Hon Mr Conway: There are 45 to 50.

Mr Morin-Strom: One of the issues that had come up with the Public Service Superannuation Act, applicable here as well, had to do with the formula for transferring service from one plan to another under these reciprocity agreements. Generally, it seems that the plans are structured so that when you get out of a plan, all you can be assured of getting is your contribution plus interest, while the cost of buying service is typically at the actuarial value of the service.

Unless you have the reciprocity agreement, the amount you get out of one plan when you leave that plan to be able to be applied to the other plan you are moving into may not pay for the cost the new plan is going to charge you for your past service. You could be at a disadvantage unless it is clear that there is real fairness in the assessment of the pension credits in both plans. For example, a person moving from one plan to another and back can end up paying both ways for maintaining pension credits which are of no real improvement to him.

Ms Skelton: When you have a reciprocal agreement, the purpose of writing it is to make the terms the same on both sides so that the pension would be costed, actuarial costs going in both ways in the terms set out in this plan, and you would not get the variation you are speaking of. That is why you would still enter into reciprocals.

Mr Morin-Strom: Let us say you have a reciprocal agreement with the public service pension plan. If you had a teacher who is moving from being a teacher to being a public servant, under the reciprocal agreement he can take his or her credits and apply them towards credits in the public service and they will be calculated on the same actuarial basis.

Ms Skelton: The costs will be calculated on the same basis, yes.

Mr Morin-Strom: However, if that teacher had taken out credits in cash, as opposed to having left them in the plan, that payment out may be on a different basis. Going on that basis, not having the right to get the service back under the teachers' pension plan may mean that when he tries to get that credit under the public service plan he has to pay quite a substantial additional cost in comparison with what this amendment would allow them to do.

Ms Skelton: That potential would be there, yes.

Mr Morin-Strom: So this amendment would allow teachers to get a fair assessment of the pension credit on a move into one of these other plans. A teacher who is changing profession into another area which is covered by reciprocal agreement would get a better or fairer credit for that service.

Ms Skelton: I do not think you could guarantee that would happen. If you have a reciprocal arrangement, you know the same terms are going to hold; if you do not, you do not necessarily know that. It depends how the individual plans treat the individual and those things do vary across pension plans. There are minimums set by the Pension Benefits Act standard but that does not mean you have exactly the same thing across the plan. Some people would use the minimum, while some people might not.

What you are trying to do in the way people cash out and buy into your plan is to be fair not only to the individual in the transaction, but to the cost to all the plan members in the fund in terms of what you are doing, because you can incur excessive costs.

Mr Jackson: But the reinstatement is only for the purpose of transferring the credit so that they can get credit for what they are seeking in their new position under the reciprocal agreement. I thought this would eliminate having to become re-employed in education in order to re-establish your credits so that you then could turn around and, having established them, quit teaching and then apply for the reciprocal agreement. This would eliminate that step.

Mr R. F. Johnston: That was certainly the way I understood it.

Ms Skelton: As I understand your amendment, you are suggesting they can reinstate their old contributions to the plan at contributions plus interest. They then will transfer out under a reciprocal agreement on an actuarial cost basis that is likely to incur a cost to the fund. The fund would transfer out more than was reinstated.

The Chair: Ms Skelton has given as much of an explanation as she can on this particular amendment, it seems.

Mr Jackson: Does the minister better understand it now?

Hon Mr Conway: I have nothing further to add.

Mr R. F. Johnston: I am just wondering, in view of the placement of this particular amendment and the concern that has been raised by the minister on it—although the recognition by the

staff is that in fact there is a potential, in the way Mr Morin-Strom has put it, that somebody could actually lose out on this—is the next section a more appropriate place to make sure that within reciprocal agreements that does not take place? Is there some kind of amendment that can be worked out there that precludes the problem Mr Morin-Strom has talked about? You have two things to worry about: one is the cost to the plan and the other is the disadvantage to a beneficiary of the plan.

I am just wondering if there is not, in the next section on reciprocal agreements, something that can be said that makes sure that does not take place. You have the two responsibilities: the responsibility to the plan but also to equal and fair treatment of the beneficiaries.

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Hon Mr Conway: I think the general direction of pension policy is to enhance affordability, not just for this plan but for all plans. That has to be recognized. I do not want to entertain amendments that I think are open to potential abuses or that in fact could provide opportunities that are not really in the plan's interest.

Mr R. F. Johnston: I understand your problem with the specific amendment. That is not what I am asking at the moment. We should take a vote on this first, presumably. If there is some agreement that the scenario Mr Morin-Strom put forward is also a possibility, then surely that is also something we should be thinking about and not just the problems that you see arising out of the amendment that has been put forward by Mr Jackson.

The Chair: Perhaps the minister and his staff want to think that over regarding sections 103 and 104 while we take a vote.

All in favour of section 102a as presented by Mr Jackson? All against?

Motion negatived.

The Chair: We are now at the reciprocal agreement section, section 103.

Mr Conway moves that subsection 103(2) of schedule 1 to the bill be struck out and the following substituted therefor:

“(2) A reciprocal agreement must provide that a person transferring benefits and contributions to the pension plan acquires a benefit under the plan based upon the actuarial cost of the expected benefit on the date of the transfer.”

Mr Morin-Strom: Again we potentially have a problem of a person having to buy the benefit at the actuarial cost where his previous plan may not be paying him at actuarial cost.

Do all of your reciprocal agreements stipulate that the payment coming into your plan from the other plan is at actuarial cost as well?

Ms Skelton: The provisions in this bill will have them all renegotiated on that basis by 1996, which I believe is the date that we have given for renegotiation.

Mr Morin-Strom: But what happens in the interim?

Ms Skelton: In the interim they will work on the basis they currently are, which is generally based on a double contribution plus interest formula.

Mr Morin-Strom: Is that for all the plans? Are people getting out of their plans double contributions plus interest?

Ms Skelton: On reciprocals, transfers across.

Mr Morin-Strom: But are you saying in this section that the benefits can only be bought at actuarial cost?

Ms Skelton: We are saying it will be the rule for the future in reciprocal agreements, which would mean it would be on both sides. A reciprocal agreement cannot have one set of terms on one side and one on another. It is in the nature of a reciprocal that it must have similar terms.

Mr Morin-Strom: Okay, I am trying to get straight what you are trying to do. Your objective will be that all reciprocal agreements will have people transferring funds based on an actuarial cost. In other words, your teachers, as they leave the system, are going to get out potentially more than their double contributions plus interest. They will get out their actuarial value and that is what will get transferred over to another pension plan to be able to buy service there, presumably at an actuarial value, and vice versa for somebody coming in.

Ms Skelton: Yes.

Mr Morin-Strom: For reciprocal agreements you have now that perhaps are on the double contribution plus interest, are they all on the same basis for movements both ways?

Ms Skelton: Yes.

Mr Morin-Strom: Now? And those reciprocal agreements will not be eliminated by this clause?

Ms Skelton: We have given a deadline by which they will have to be renegotiated and, given the existence of the Pension Benefits Act, there will be a large number of plans interested in renegotiating those.

Mr Morin-Strom: Do you have a reciprocal agreement on the other formula, which might be a lower-cost formula, lower-value formula? You are willing to allow that formula to be the formula for buying the service in the interim?

Ms Skelton: For moving within those reciprocal agreements, yes.

The Chair: Does that satisfy you, Mr Morin-Strom? Okay.

Motion agreed to.

The Chair: May I consider section 103, as amended, carried? Carried.

The next amendment I have before me is to section 114, so could I ask you to consider sections 104 to 113? May I consider all of those carried as read? Section 114, I have been apprised, may also be included since this is an addition to 114 that I have been presented with, so 114 as presented could also be carried. Carried.

What I have, as you have, is a rather lengthy government amendment on sections 114a to 114c. It seems to have a few equations in it, Mr Conway, and I know you had a little difficulty with those last night. I do not know whether you want to read these four pages.

Mr R. F. Johnston: I do not think there is any choice.

The Chair: I do not think there is either. That is unfortunate and we will have to listen.

Mr Conway moves that part X of schedule 1 to the bill be amended by adding thereto the following subpart:

"C. Surplus and Deficiency

"114a(1) An actuarial gain disclosed by a going concern valuation made after the initial valuation described in schedule 2 shall be applied as set out in this section.

"(2) The amount of an actuarial gain shall first be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency that is disclosed by the initial valuation or a later valuation.

"(3) The amount of an actuarial gain, if any, remaining after a solvency deficiency is eliminated shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability disclosed by a valuation made after the initial valuation.

"(4) The amount of an actuarial gain, if any, remaining after a going concern unfunded actuarial liability is eliminated under subsection 3 shall be applied to reduce and, if possible, to

eliminate a going concern unfunded actuarial liability disclosed by the initial valuation.

"114b(1) In this section,

"going concern assets' means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

"going concern liabilities' means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

"surplus,' in relation to the pension plan, means the amount, as determined by an actuarial valuation, by which the going concern assets of the pension fund exceeds the going concern liabilities of the fund,

"(a) calculated on a going concern basis, for the purposes of a contribution offset of a distribution of surplus; or

"(b) calculated on a plan windup basis, for the purpose of a distribution of surplus.

"(2) The minister may direct the administrator to apply all or part of the surplus under the pension plan to offset the contributions required under sections 24 (contributions by the minister) and 25 (contributions by employers) in accordance with subsection 5.

"(3) Subject to subsection 4, the minister shall determine the amount of surplus to be applied to offset contributions and the period during which it is to be applied.

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"(4) The administrator shall not apply any surplus to offset contributions while the pension plan has a going concern unfunded actuarial liability or solvency deficiency within the meaning of section 1 of schedule 2 to the act.

"(5) The amount of a person's required contributions under section 24 or 25 in a month shall be offset by the amount calculated using the formula,

$$"(A / B) \times C$$

"in which,

"A' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period,

"C' is the amount of surplus to be applied to offset contributions required under sections 24 and 25 during the month.

"(6) To the extent permitted under the Pension Benefits Act, 1987, the minister may direct the administrator to pay out of the pension fund all or part of the surplus under the pension plan to the persons required to make contributions under sections 24 and 25 in accordance with subsection 8.

"(7) A direction under subsection 6 may be made while the pension plan continues or upon its termination.

"(8) The amount of surplus to which a person becomes entitled shall be calculated using the formula,

$$"(A / B) \times C$$

"in which

"A' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C' is the amount of the surplus to be distributed.

"114c(1) This section applies if an actuarial valuation of the pension plan, after the initial valuation, discloses a solvency deficiency or a going concern unfunded actuarial liability.

"(2) Every person required to make contributions under section 24 (contributions by the minister) or 25 (contributions by employers) shall make additional contributions in accordance with subsection 4.

"(3) Within the limit established under the Pension Benefits Act, 1987, the minister shall determine the number of months during which additional contributions shall be made.

"(4) The amount of a person's additional contributions in a month shall be calculated using the formula,

$$"(A / B) \times C$$

"in which

"A' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B' is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C' is the amount of the solvency deficiency or going concern unfunded actuarial liability in

respect of which the additional contributions are required during the month."

The Chair: Thank you very much.

Mr R. F. Johnston: That is self-explanatory?

The Chair: With that comment, and just to make are our lives more complex, I do have two amendments to that amendment, so we will take one at a time.

Mr R. F. Johnston: I think before we do we should make sure the minister never takes travel directions from whoever wrote this.

The Chair: With that comment, Mr Morin-Strom, would you like to present your first amendment? I have to take them one at a time.

Mr Morin-Strom: First I have a point of order here. It seems to me unusual that we would deal with three sections of the bill in one motion. Normally we should deal with sections of the bill separately and vote on them and have amendments to them individually, as opposed to this motion. I understand there are some rules, in fact, in terms of how many amendments can be made to a motion. Presumably the government can come in here with one motion moving the whole bill and we would be limited on how many amendments we could make.

The Chair: Excuse me. These are sections. They are additions. They were presented as a package and that is why I let them be presented as such. If you wanted each of those sections, sections 114a, 114b and 114c, dealt with as individual sections, I have no trouble.

Mr Morin-Strom: Would they not get renumbered that way eventually, into new sections?

The Chair: I am sorry, I do not know that. I do not know whether there is anybody who can help you. Will that get renumbered? I know I was warned yesterday about a renumbering procedure for one section of this complex bill. Does anybody have any idea of how this would play out if it is added; how the numbering would go?

Ms Hopkins: The numbering of the bill changes between now and the third reading copy of the bill. Any time we introduce new subsections or new sections into the bill, we flag the new ones by labelling them with an a, b or c after the number. When you see the bill as reprinted for consideration at third reading, these provisional numbers will be replaced with real numbers and we will number the bill starting from section 1 to whatever it is at the end of it all.

The Chair: So how will these look?

Mr R. F. Johnston: It is hard to tell.

The Chair: Just say they fell after section 114.

Ms Hopkins: In the third reading bill these will be sections 115, 116 and 117 and then we would renumber everything that is now in the bill, starting with section 115, as counting off from section 118.

The Chair: Thank you.

Mr Morin-Strom: So in fact we have three sections in one motion, not three subsections.

The Chair: Okay, I will deal with them separately, if you so request. You will have to help me. Is your amendment just to the one section, section 114a, and these are additions?

Mr Morin-Strom: Mine are all on section 114a, so that is the first section.

The Chair: All right. I think that is what we will deal with then, 114a.

Mr Morin-Strom: It is his first amendment.

The Chair: We will do the amendment you have presented to 114a.

Mr R. F. Johnston: But we will take them all as having been read.

The Chair: We will not listen to b and c being re-read, we will consider them being read at the time appropriate.

Mr Morin-Strom moves that the proposed subsections 114a(2), 114a(3) and 114a(4) of schedule 1 to the bill, as set out in the government motion, be struck out and the following substituted therefor:

"(2) The amount of an actuarial gain shall first be applied to reduce and, if possible, eliminate the payments made required to liquidate any unamortized balance of a solvency deficiency that arises on or after 1 January 1990.

"(3) The amount of an actuarial gain, if any, remaining after a solvency deficiency described in subsection 2 is eliminated shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability that arises on or after 1 January 1990."

Are there any comments, questions or discussion on this amendment? Please speak to it.

Mr Morin-Strom: I will indicate what the amendment is designed to do. The amendment is designed to ensure that the government is not in the process of stealing the funds for its own purposes.

The government has proclaimed a commitment to pay the solvency deficiency up to this point in time, and we want to have language in here that assures the plan members that in fact the government is not going to use funds in the plan to relieve the government of the payment

commitments that it has promised to make to resolve the issue of the deficiencies up to 1 January 1990.

Our amendment would ensure that actuarial gains could only be used to eliminate deficiencies that occur in the plan after 1 January 1990 but removes what, in the government's language, quite clearly is going to give the government the right to in fact avoid ever having to make payments on its commitment to pay for that previous liability.

1640

The Chair: Mr Conway, would you like to respond?

Hon Mr Conway: Yes. This revisits a discussion we had some hours ago on a related matter in another, earlier part of this bill, and I simply remind my friend from Sault Ste Marie that under a government-sponsored plan, it is the government that has the responsibility for the deficit and also has the right to apply, presumably, any actuarial gain to that.

I have made that point before. It is simply unfair to the taxpayers to imagine that they would—and there is no debate. I have not heard the member from Sault Ste Marie respond to the member for Middlesex (Mr Reycraft), who some days ago asked a question in this respect. There has been nobody on the left side of the chair who has argued that somehow the taxpayers did not have a responsibility for the deficit. If they have got a responsibility for the deficit, it seems to me they have a corresponding right to apply again in that respect.

Mr Morin-Strom: I think this is nothing more than absolute theft of the funds of the pension plan. These are funds that are being held in trust for the members of the pension plan, and for the government to structure valuations of the plans and the opportunity for actuarial gains and then take those into its own coffers is nothing more than pure and simple theft. This government is condoning theft of the funds of the teachers of this province and in this section is going to allow that theft to become legalized. I just think this is one of the most flagrant actions we have ever seen from this government.

Hon Mr Conway: I appreciate the very strong feelings from the member from Sault Ste Marie. I had some anticipation that he would say this; there is a very basic difference of opinion between us in this respect.

Let me just say two quick things. The member seems to forget that we have a Pension Benefits Act that, in our view, provides very clear

protection for plan members. It sets out in detail what can and cannot be done with respect to the contributions of plan members. I really want to underscore that.

Second, I have to repeat something that was said earlier. As plan sponsor, the government has the obligation to ensure that there are sufficient funds to provide for the benefits that have been earned. Correspondingly, the members have a right to expect that the benefits that have been offered by the plan will be provided. It seems to me that is the clear entitlement of members and that is an obligation on behalf of government to meet. There is nothing in any of this that would detract from either of those.

Mr Morin-Strom: I would say there is nothing aboveboard in what is going on here. What is going on here is a means of confiscating the funds of the members of this plan for the government's purposes.

The government has made a commitment in words that it is going to pay the unfunded liability up to 1 January 1990, but this clause is the operative one that is going to allow it to relieve itself of that commitment and allow the plan members, who are asked to pay an additional percentage into this fund—then the board, which is going to be controlled by the government, and the actuarial assumptions that are going to be controlled by the government are going to be of such a conservative nature that it will ensure actuarial gains will occur. Those gains will then not be used to provide any improvements in benefits to those members. They will have paid additional amounts to achieve gains that the government then is going to use to eliminate its own need and promise to make payments on the liability to this point.

Mr R. F. Johnston: Mr Morin-Strom just made the point I have made. There is no protection here from exactly that kind of conservative, Conrad Blackish kind of approach to dealing with pensions. There is no protection here to say that you are not going to profiteer as a government, essentially on the backs of the teachers. They made the point a number of times that there is no major gain for them in any of this, that there is major cost. I think that if there is good faith on the part of this government that it is not doing that, the amendment put forward is an appropriate amendment.

Mr Reycraft: Mr Morin-Strom seems to assume that there will be a surplus in this fund and he refuses to recognize that the opposite may occur, that we again may end up with an actuarial deficit in the fund. He describes as theft and

confiscation the use of a surplus in the fund to offset any previous liabilities that have been incurred. I would like to know how he feels about the use of taxpayers' money to fund actuarial liabilities in the fund, because that is what is required now. There is the requirement that \$4 billion of taxpayers' money be—

Mr Morin-Strom: You are asking for an exemption from the Pension Benefits Act. You will not have to do it. What are you talking about?

Mr Reyecraft: —inserted into the fund now to meet the obligations of the fund because of the unfunded liability. Again, what he is saying is that if there is a deficit in the fund the government should have it, and if there is a surplus in the fund the teachers should have it. Is that not in essence what you are saying?

Mr Morin-Strom: In fact, it is the reverse of what you are saying. You are doing nothing to solve the deficit. You are not putting funds in to eliminate the deficit. You are going to confiscate surpluses that are going to be generated from the kinds of assumptions you are imposing on this plan to pay off the kind of commitment you have made in words only. In fact, you have made no commitment to pay off any of the deficit.

Hon Mr Conway: Could I make a point here? If we were to do what you suggest we would, it would not be in our interest. If we take these conservative assumptions and somehow manipulate all this actuarial assessment, we pay. It increases on both sides for us, so it is not in our interest. It increases the unfunded liability and it is going to increase the contribution rate on both sides. That is certainly not in our interest at all.

I think the assumption that we would do it in the first place is a wrong assumption, and the assumption is completely erroneous that even if a government did it, it would be in the government's interest. It would be a very counterproductive thing to do because it would have significant cost implications for the government and we obviously would rather not have that.

Mr Morin-Strom: You would rather not have to pay anything. This is the clause that is going to allow you to avoid having to make payments into the plan to eliminate that deficit up to 1 January 1990.

Hon Mr Conway: I just do not accept that analysis. I would repeat for one last time the point that you have to understand what the Pension Benefits Act provides by way of protection for plan members. Very clear rules are in place as to what a plan sponsor can and cannot

do with respect to gains that are attributable to member contributions, the 50 per cent rule that Janet Skelton may want to explain in some detail. The fact of the matter is that there are real and significant protections that are there and that certainly the government cannot ignore.

Mr Morin-Strom: The minister is not looking at the fact that in this bill those protections of the Pensions Benefits Act are not in place. The government in this bill is asking for specific exemptions from the Pension Benefits Act with respect to the payment of those kinds of liabilities. The minister knows that the Pension Benefits Act demands that an unfunded liability be paid off within 15 years. This act quite explicitly allows the government to pay it off in 40 years. When we get to that section and that table you have, I am going to provide you with some evidence and perhaps you will provide us with greater evidence.

I would very much like to see the specifics of the amortization schedule on the 40 years of the liability and where that liability goes, because that liability does not go down under any payments your government is going to make in the foreseeable future. You are not even coming close to paying the interest on that liability in direct contravention of the Pension Benefits Act, and you are getting the authority for that in terms of exclusions that are specifically put into this act.

1650

Hon Mr Conway: The point I am making is that the protection for plan members is very clear in so far as the Pension Benefits Act is concerned, in terms of what can and cannot be done with gains and surpluses and other related matters that you were addressing as your concern a moment ago. I will be quite happy to take up your later point when we talk about the amortization schedule that is before you. It comes back to the basic difference of opinion I think we have as to what government sponsorship means.

Mr Morin-Strom: Whose money it is, is the basic difference. You believe it is your money and the teachers believe it is their money. You are trustee for those plans. You may be the ones controlling the board and managing the funds, but it is not your money. You have no right to the money. The money belongs to the teachers. You should be managing as a public trustee in the best interests of the plan members.

Hon Mr Conway: I said to you that my position is that the plan members are entitled.

What is it they are entitled to? They are entitled to the benefits that have been provided for.

Mr R. F. Johnston: Just what Conrad used to say.

Hon Mr Conway: No, this is not.

Mr R. F. Johnston: Oh, it is what Conrad used to say to the Dominion workers. It is exactly the same language.

Hon Mr Conway: I will never convince you. I appreciate that there is a difference of opinion between us.

The committee divided on Mr Morin-Strom's amendment to the amendment, which was negated on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 2; nays 6.

The Chair: We have another amendment to the amendment that I think we should deal with in the form of schedule 1, section—no, I am sorry. We asked that we deal with each of these separately. May I consider amendment 114a carried?

Motion agreed to.

The Chair: Mr Morin-Strom moves that the proposed section 114b of schedule 1 to the bill, as set out in the government motion, be struck out and the following substituted therefor:

"114b(1) No surplus shall be used to offset contributions required under the pension plan while the pension plan continues.

"(2) No surplus shall be paid out of the pension fund while the pension plan continues."

Mr Morin-Strom: In this section of the bill, the government is providing a formula by which surpluses can be redistributed, in particular to itself, although I believe it also includes surpluses being distributed to members. In our view, this is inappropriate. These are funds that belong to the members and they should remain in the plan for the potential future benefit for members or potentially to offset what may be future losses.

It is inappropriate that this government again should be introducing clauses that will permit it to take surpluses out of the plan, as it is generally called, contribution holidays; we have a section here on reduction of ministers' contributions. Contribution holidays by the government set a

precedent that I would think no government would want to let the public know about. It certainly sets a terrible precedent for what kinds of pension legislation we can expect from this government in future.

Hon Mr Conway: Again, it will not surprise you that I just do not accept that analysis.

Mr R. F. Johnston: Conrad bought a newspaper with his. What you are going to do with yours?

Hon Mr Conway: Listen, the rhetoric is as I would have predicted; the reality is rather different. The reality is that with the kind of government sponsorship that is proposed here, there is nobody disputing who gets to pick up the deficit. The companion piece to that, it seems to me, within the PBA rules, is that the plan sponsor gets to access the surplus.

Mr Morin-Strom: That is a crock because there is a dispute about who picks up the deficit. You are refusing to pick up the deficit yourselves and are asking for an exemption from the PBA in terms of covering that deficit that exists in the fund now. You are not paying off the deficit but you still want the surpluses besides.

The Chair: Do you want to continue, Minister?

Hon Mr Conway: I do not have much to add to what I have already said.

The Chair: Is there anything further to be said to this amendment to the amendment? I would ask that we take the vote.

Mr Morin-Strom: Recorded vote.

The committee divided on Mr Morin-Strom's amendment to the amendment, which was negated on the following vote:

Ayes

Jackson, Johnston, R. J., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 3; Nays 6.

The Chair: May I consider amendment 114b carried?

Motion agreed to.

The Chair: May I consider amendment 114c carried? Carried.

May I consider section 114, as amended, carried?

Mr Morin-Strom: Can we have a recorded vote?

The Chair: You want a recorded vote on section 114, as amended? Those who are for section 114, as amended?

Mr R. F. Johnston: It cannot be the same vote.

The Chair: We have added sections to it.

Clerk of the Committee: These are separate sections.

The Chair: I am told that they are really not related to section 114, although they are numbered as such, so I do not exactly know how to state this. We have carried all these sections separately and you are asking for a recorded vote that there is no need to take.

Mr Morin-Strom: Let's have a recorded vote on the last one, section 116, which we never had a recorded vote on. We did on sections 114 and 115.

The Chair: There is no section 116 that we have dealt with at the moment.

Mr Morin-Strom: Section 114c then; sorry.

The Chair: I thought we had done that, but if you feel we have not—

Mr R. F. Johnston: You did it orally but we were then calling for a recorded vote, which we thought was on the overall but was just on section 114c.

The committee divided on the amendment, which was agreed to on the following vote:

Ayes

Conway, Elliot, Fawcett, Keyes, Stoner.

Nays

Jackson, Johnston, R. J., Morin-Strom.

Ayes 5; Nays 3.

Mr R. F. Johnston: The forces of evil are weakening; there is one less.

Hon Mr Conway: I will not ask the question.

The Chair: Do you have a question on this procedure we are using here?

Hon Mr Conway: No.

The Chair: We have it all correct, do we, Mr Decker?

Clerk of the Committee: Yes.

The Chair: I have an amendment from Mr Morin-Strom that is rather all-embracing, although very short in words. It is to part XI of the act, which includes, as I understand it, all sections 115, 116, 117 and 118. Mr Morin-Strom, perhaps you would like to speak to that. It is difficult for me to deal with because I have other motions.

Mr Morin-Strom: They are sections 115, 116, 117.

The Chair: Pardon? Is it refined to certain sections?

Mr Morin-Strom: Sections 115, 116 and 117; I can do them separately.

The Chair: So it is refined to that.

I have other amendments to those sections from you as well, but we have to take one at a time. Is this the order in which you would like me to deal with this? Since you know the intent of your motions, is this the way in which you would like this dealt with or would you rather go to your other amendments, which I presume are not related?

1700

Mr Morin-Strom: Could we not just do it as one amendment?

The Chair: This is the one we should deal with first, the one that is all-embracing, with three sections.

Mr Morin-Strom moves that part XI of schedule 1 to the bill be amended by striking out "The Lieutenant Governor in Council by order may" wherever it occurs and inserting in lieu thereof in each instance "the administrator may".

That is to cover sections 115, 116 and 117, as I understand it.

Mr Morin-Strom: Yes, there are appearances of that phrase. My concern is that it is inappropriate that the Lieutenant Governor in Council be making decisions on designation of private schools and organizations. It could apply in other parts of the bill as well. I am concerned that the cabinet is interfering in the operation of the pension plan in an area that should be the jurisdiction of the board, and in particular the administrator of the plan on direction from the board. It seems to me the board has a purpose and that purpose should be the administration of the plan. I think it is inappropriate that the cabinet should be interfering with the board.

Ms Skelton: I just want to clarify the reason "The Lieutenant Governor in Council" is there. It was in the previous plan "Lieutenant Governor in Council". There have been some problems with the way designations had been working in terms of due process for those bodies actually committing to pay the funds on behalf of members. We have been reviewing those processes. We are about two thirds of the way through the job of getting it sorted out, so we would not choose to delegate it right now. In principle there is not a problem in time with going this way. It just

seems foolish to hand over a halfway-completed task.

Mr Morin-Strom: So that change may occur eventually, but you are not prepared at this point.

Ms Skelton: Yes, I would say within a year or two years one would leave it to the administrator because it is sensible to do it in that way.

The Chair: Are there any further comments on this amendment?

Mr Jackson: So there is really no objection to doing it now. It is just that they would rather not.

Mr Morin-Strom: Do you want to vote for a year from now on this or what?

Mr Jackson: We will stand down the section for a year and a half.

Hon Mr Conway: I think we should put the question.

The Chair: All right. I am ready to do that. We have an amendment to schedule 1, part XI. Those who are for the amendment as presented? I think it is not carried.

Motion negated.

The Chair: May I consider section 115 carried? Carried.

The next amendment I have is to section 116, a rather lengthy amendment to almost all subsections of this section, as I see it. Mr Morin-Strom, would you please read it and then speak to it. Do you have your amendment?

Mr Morin-Strom: Yes. It seems to me that this is attempting to do the same thing for some clauses where the words on the other did not work properly. The intent is again that the administrator should be managing the designation.

The Chair: Do you want to withdraw it or do you want to vote on it?

Mr Morin-Strom: I take it from the minister that he is going to act on this within a year.

Hon Mr Conway: Yes, that is what we would expect, within a year to a year and a half.

Mr Morin-Strom: I will withdraw that amendment.

Mr R. F. Johnston: It looks as if the language means less than a decade.

The Chair: May I consider section 116 carried? carried.

The next amendment I have is to section 119. May I consider sections 117 and 118 carried? Carried.

We are then suggesting adding to schedule 1 some, again, rather lengthy amendments. This is a government motion and it is six long pages.

Mr Conway moves that schedule 1 to the bill be amended by adding thereto the following sections:

"PART XII

"ONTARIO TEACHERS' PENSION PLAN "BOARD

"119. In this part, 'board' means the Ontario Teachers' Pension Plan Board.

"120(1) In this section, 'executive' means the executive of the Ontario Teachers' Federation as described in subsection 6(1) of the Teaching Profession Act.

"(2) The Lieutenant Governor in Council shall appoint as board members five individuals recommended by the minister and three individuals recommended by the executive.

"(3) Subject to subsection (6), the term of office of a board member shall not exceed three years.

"(4) The Lieutenant Governor in Council shall determine the term of office of each of those board members whose appointment is recommended by the minister.

"(5) The executive shall determine the term of office of each of those board members whose appointment is recommended by the executive.

"(6) The term of office of the board members appointed upon this section coming into force is,

"(a) one year for one of the board members recommended by the minister and one of the board members recommended by the executive;

"(b) two years for two of the board members recommended by the minister and one of the board members recommended by the executive; and

"(c) three years for two of the board members recommended by the minister and one of the board members recommended by the executive.

"(7) A board member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years.

"(8) A former board member may only be reappointed once three years has elapsed since the end of his or her most recent term of office.

"(9) If a board member ceases to hold office before his or her term expires, the Lieutenant Governor in Council, on the recommendation of the minister or the executive, as the case may be, shall appoint another individual to complete the term of office of the original board member.

"(10) The members of the Teachers' Superannuation Commission cease to hold office on the 1 January 1990.

"121(1) The board members shall elect from among themselves a chairperson.

"(2) If the board members do not elect a chairperson within 30 days after the office of chairperson becomes vacant, the Lieutenant Governor in Council shall appoint a board member as chairperson.

"(3) Upon this section coming into force, the Lieutenant Governor in Council shall appoint a board member as chairperson.

"(4) The term of office of a chairperson shall be determined by the board or by the Lieutenant Governor in Council, as the case may be, and shall not exceed two years.

"(5) A chairperson is eligible to hold office for a maximum of three consecutive terms.

"122(1) The board may appoint committees composed of board members or individuals who are not board members or both.

"(2) The term of office of a committee member is a maximum of three years.

"(3) A committee member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years.

"(4) A former committee member may only be reappointed once three years has elapsed since the end of his or her most recent term of office.

"123(1) A majority of the members of the board constitutes a quorum of the board.

"(2) A majority of the members of a committee constitutes a quorum of the committee.

"124(1) Board members and committee members shall be paid such reasonable remuneration and expenses as the board may determine.

"(2) A board or committee member who is employed in the public service of Ontario is not entitled to be paid remuneration other than an honorarium in recognition of salary lost as a result of attending board or committee meetings.

"(3) A board or committee member who is employed in the public service of Ontario may be reimbursed for expenses actually incurred in the performance of his or her duties as a board or committee member.

"(4) The remuneration and expenses of board and committee members shall be paid out of the pension fund.

"125. Administrative and operating expenses of the board shall be paid out of the pension fund.

1710

"126(1) The board may appoint such employees as it requires to administer the pension plan and manage the pension fund.

"(2) The Public Service Superannuation Act applies with respect to such employees of the board as the board designates, as if the board had been designated by the Lieutenant Governor in Council under section 28 of that act.

"(3) Employees' compensation shall be paid out of the pension fund.

"(4) Each employee of the board and his or her heirs, executors and administrators shall be indemnified and saved harmless by the board from and against all costs, charges and expenses sustained or incurred in or about any action, suit, proceeding or claim against him or her for any act, omission, deed, matter or other thing made, done or permitted or omitted to be made or done in or about the execution of the duties of his or her employment by the board, and every payment made for the indemnification is an administrative expense of the board.

"(5) Indemnification does not extend to the act or omission to act of any person that was done or omitted to be done dishonestly or in bad faith.

"127(1) The board may engage persons other than those appointed as its employees to provide it with professional, technical or other assistance.

"(2) The board shall retain an actuary and an auditor.

"(3) Payment of the remuneration and expenses of persons engaged under this section is an administrative expense of the board."

Ms Skelton: On subsection 126(2), the Public Service Pension Act went through today, so I presume this should now—

Ms Hopkins: It is not in force yet.

The Chair: "128(1) The board shall administer the pension plan, manage the pension fund and advise the minister on matters relating to the plan and the fund.

"(2) The board may exercise such powers as are necessary to carry out its duties.

"(3) The board may make rules for the conduct and management of its affairs and for the practice and procedure to be followed in matters before it.

"(4) The board may,

"(a) acquire, hold in its own name and dispose of real property or an interest in real property for occupation and use by the board or as an investment by the pension fund;

"(b) participate as a partner or otherwise in a syndicate or association of persons in the acquisition, holding, management or disposition of property;

"(c) enter into an agreement to administer another pension plan and to administer a benefit

plan for retired members and to recover the costs of doing so from that plan.

"129(1) The board may delegate in writing any of its powers or duties to a committee, an employee of the board or a person retained by the board subject to a limitation or condition set out in the delegation.

"(2) With the approval of the board, a committee of the board may delegate in writing any of its powers or duties to an employee of the board.

"130(1) The board shall at the close of each fiscal year file with the minister an annual report upon the affairs of the board.

"(2) The minister shall submit the board's annual report to the Lieutenant Governor in Council and lay it before the assembly if it is in session or, if not, at the next session.

"(3) The board shall provide the minister with a copy of every actuarial valuation of the pension plan that the board intends to file with the Pension Commission of Ontario at least 45 days before it is filed.

"(4) The board shall not file an actuarial valuation with the Pension Commission of Ontario until the minister advises the board in writing that he or she agrees that the valuation be filed.

"(5) The board shall provide the minister with a copy of every auditor's report on the pension fund within 30 days after the board receives it.

"(6) The minister may audit, at his or her own expense, the administration of the pension plan and the management of the pension fund and the board shall co-operate in the conduct of the audit and shall provide any information required by the auditor.

"(7) The board shall make such further reports and provide the minister with such information as the minister from time to time requires."

Thank you very much, Mr Conway, for a very complete amendment. I presume we will deal with this in a way that would be most acceptable, and that is to deal with each section individually. I have amendments to this amendment.

The first one is to section 120. May I consider section 119, as amended, carried? I guess I should say here "as added"; is that the correct term?

The Chair: On the next section then, section 120, we have an amendment. Mr Morin-Strom, would you like to present that?

Mr Morin-Strom: Yes.

The Chair: Mr Morin-Strom moves that the proposed section 120 of schedule 1 to the bill as

set out in the government motion be struck out and the following substituted therefor:

"(1) The board shall be composed of six board members, three appointed by the Lieutenant Governor in Council and three appointed by the Ontario Teachers' Federation.

"(2) The term of office of a board member shall be determined by the person appointing him or her and shall not exceed three years.

"(3) If a board member ceases to hold office before his or her term expires, the person who appointed that board member shall appoint another individual to complete the term of office of the original board member.

"(4) The members of the Teachers' Superannuation Commission cease to hold office on 1 January 1990."

Would you like to speak to that?

Mr Morin-Strom: Yes, I would. I know the government is going to proclaim that it is the government's plan, that it is the the government's money, that this whole bill has been designed by, for and on behalf of the government of Ontario and therefore the government should also have the majority in control of the board.

However, we have had three studies done for the government, by Rowan, Coward and Slater, with respect to deficiencies in the operation of the teachers' superannuation plan, and one of the main focuses of that criticism was that the plan should be managed at arm's length. In my view, the only way we can get an arm's-length management is to have a balanced board representation.

A board that is majority government is a government board; it is not a board that is at arm's length from the two principal concerns in the plan, the plan members and their employer, the government. I know the kind of argument the minister is going to make, that it is his plan and he wants to have a majority.

This amendment is a fair way of getting a board that is at arm's length. The board will still have to live by the terms of all the balance of this very one-sided bill. The pension plan, as laid out in the bill, is all to the advantage of the government, and the board will have to deal with that, but the least the government could do is to have a balanced board. Therefore, we have recommended that the board be balanced, with three members from each.

We have also asked that there be some changes in some other terms of the government's plan which we find unacceptable with respect to putting limits on reappointments. Particularly, we have heard from the teachers' associations

and federations concern that inability to reapportion means that expertise will be lost on the board.

Pension matters are extremely complex matters, and it is to the advantage of the plan members that the board that is managing the fund know what is going on and understand pension matters, and it is our feeling that putting a limit of six years on membership on the board is to the disadvantage of plan members. It threatens the good management of the plan in a very technical financial area where in fact expertise, understanding and experience are valued commodities, not ones to be thrown out at whim within six years.

1720

The Chair: Mr Conway, do you want to make the argument that Mr Morin-Strom has predicted you are going to make?

Hon Mr Conway: Not in precisely that way. But my friend the member for Sault Ste Marie has raised what some of the analysts have recommended, and I have got one of the specific recommendations in respect of this matter before me. Let me read recommendation 7.1 of the Rowan report:

"The teachers' superannuation fund be established at arm's length from the government and teachers, with its own board responsible for investment management and appointed by the Lieutenant Governor in Council. A minority of board members should be plan members or their representatives."

That is precisely what we have done.

The other two reports, as I remember them, make it very clear that the membership on any board with the kind of powers being contemplated—remember, this board has got very significant new powers in so far as managing the investment of this huge account is concerned—should be a reflection of the sharing of risk and reward.

Certainly the Rowan recommendation makes it very plain what he contemplated. As I remember Coward and Slater, they similarly indicated that the membership had to reflect the basic decision about risk and reward. Neither of those gentlemen, I imagine, on my memory of what they recommended, would accept an argument that if the government is going to be plan sponsor, guarantee the benefits of this fund and accept all the deficit, you can then have an equal representation on the board given the powers of this board. It is quite incompatible by the logic they advance.

Mr Morin-Strom: I disagree with the minister's interpretation of the recommendations that the government has received from the analysts, who severely criticized the government for the mismanagement of this plan and for the use of the plan in the interests of the government as opposed to in the interests of the members of the plan.

Hon Mr Conway: I repeat that Mr Rowan seems very clear in his recommendation 7.1:

"The teachers' superannuation fund be established at arm's length from the government and teachers, with its own board responsible for investment management and appointed by the Lieutenant Governor in Council. A minority of board members should be plan members or their representatives."

It could not be clearer.

Mr R. F. Johnston: It almost sounds like the other recommendation we heard a few minutes ago.

The Chair: Mr Jackson is the person whom I would like to recognize.

Mr Jackson: Quick question: It is my understanding that the Treasurer (Mr R. F. Nixon) currently has a group advising him on these matters, and yet we have been unable to determine who these individuals are. Is that true? I want to get a sense of how fully open we are going to be about these matters.

Hon Mr Conway: Kathy Bouey would be quite happy to answer, I am sure.

Ms Bouey: I believe the Treasurer has appointed a Pension Investment Advisory Panel. The purpose of the panel is to ensure that the transition is carried out in a way that is sound from the plan's perspective as well as the government's in terms of how the assets are transferred and to assist the new board with some initial background information so that it can have a head start, if you like, in determining its investment policies and that kind of thing. It is more in the nature of providing draft materials that the board is completely free to change.

Mr Jackson: Is it giving investment consulting or is it—

Ms Bouey: No, these people are serving on the basis of just providing advice.

Mr Jackson: And they are getting a fee for that?

Ms Bouey: I do not believe so.

Mr Jackson: They are not being paid a fee. Is it all volunteer work?

Ms Bouey: I believe so.

Mr Jackson: Hell of a way to run a ship.

Does the government have any difficulty disclosing the names of these individuals? What strikes me as odd is that they did not have access to it when they were talking about a joint model.

Ms Bouey: The investment advisory panel was actually appointed later than when the partnership discussions ended, essentially. I believe we did make—

Mr Jackson: When did the partnership discussions end, in your mind?

The Chair: Let's have one question at a time.

Ms Bouey: Perhaps if I could answer the first one.

Mr Jackson: I caution her to be very careful with this one.

The Chair: Please, one question at a time. I think that is the fairest way to deal with this.

Ms Bouey: When I said the partnership discussions ended, I meant the sort of ongoing regular meetings of the working group. Certainly the discussions did continue, but it was not on the almost day-to-day basis that the earlier business was.

I am not sure of the exact date the investment advisory panel members were appointed. I believe it was some time in November. I believe the names were available to people in the federations. As I understand it, the people on the panel—and Janet perhaps can help me out because this is not my direct area—are Stan Beck, Jalynn Bennett, Paul Cantor, Robert Silcox from OMERS and I believe Terry Stephen is chairing the panel. That is the membership.

Mr Jackson: Most interesting.

The Chair: I am glad you found it such. Are there any further discussions to this amendment to the amendment?

Mr R. F. Johnston: What about the other aspects of the amendment that have been raised? You have not responded to any of those.

The Chair: Is he specific enough for you, Mr Conway?

Mr R. F. Johnston: I am talking about the limitations on the terms that are presently in the minister's addition to the act compared with what was suggested by Mr Morin-Strom.

Hon Mr Conway: I listened to what the member for Sault Ste Marie advanced and I think—

Mr R. F. Johnston: We use names here. It is in the House we use the ranks.

Hon Mr Conway: I am a strict formalist. You know that, Mr Johnston.

Mr R. F. Johnston: That is the form for this committee.

Hon Mr Conway: I think you want to strike a balance between too much turnover and too comfortable a pew, and I think we have accomplished that here. I think there is a very good balance.

Mr Jackson: There is not enough turnover there and they feel far too comfortable in their pews. That is what I have seen demonstrated.

Hon Mr Conway: That may be true. I think the kind of board that is contemplated here strikes a good balance. I want some assurance that there is going to be some movement. The six-year rule is not unreasonable.

Mr R. F. Johnston: Thank you, Minister. I appreciate the clarification.

The committee divided on Mr Morin-Strom's amendment to the amendment, which was negatived on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: May I consider section 120 of schedule 1, as presented in Mr Conway's amendment, as part of the bill? Carried.

Mr Morin-Strom moves that the proposed subsections 121(2), (3) and (4) of schedule 1 of the bill, as set out in the government motion, be struck out and the following substituted therefor:

"(2) The term of office of the chairman shall be determined by the board and shall not exceed two years."

Mr Morin-Strom: I think it is a bit inappropriate that we set up a board and we do not even give the board the right to name its own chairperson.

Hon Mr Conway: Yes, we do.

Mr Morin-Strom: I see there are certain provisions here in which the Lieutenant Governor in Council will appoint the chairperson. I think it is inappropriate that the cabinet is going to interfere and determine who the chairman is going to be.

Mr R. F. Johnston: That is his plan. Come on, Karl. It is Sean's plan and he can do what he wants. You know that.

Hon Mr Conway: My friend from Scarborough so cuts to the quick that it is hardly fair.
1730

It is quite clear from section 121 that the government is making every effort to provide the board members with the right to elect a chair. Subsection 2 is a default provision and I think it is a very appropriate safety valve, given the importance of what it is we expect—

Mr R. F. Johnston: If your own majority-government-appointed board cannot come up with a chair—

Mr Morin-Strom: If we do not like who they pick, we have section 4: "The term of office of the chairperson shall be determined by the board or by the Lieutenant Governor in Council, as the case may be, and shall not exceed two years." So if you do not like him, you can turf him out right away.

Mr R. F. Johnston: Because it is Sean's plan. Bingo.

The Chair: This is a serious matter, I am sure. Let us get a bit of order back.

Mr Jackson: It will be serious for the chairman who is to be told he cannot be the chairman.

Hon Mr Conway: This is very serious business and we take it as such.

Mr R. F. Johnston: It is marginally obscene as well.

Hon Mr Conway: It is quite clear from subsection 121(1) that the board members shall elect from among themselves a chairperson. I cannot imagine what it might be, but I simply provide in subsection 121(2) a default provision that if, for some reason, they cannot come up with a chair, the cabinet will appoint the chair. This is a serious business and I do not see why that should trouble you.

Mr R. F. Johnston: You are appointing the majority of members. What do you mean "if they cannot come up with a chair"? Give me another parallel for this.

The Chair: I think you have all made your points on the amendment. May I consider the discussion on this closed?

Mr R. F. Johnston: Is there a government parallel anywhere for this kind of thing? What about police commissions, for instance? Do you do this with police commissions where you have a majority? No. Where on earth does this apply, where you have a majority of your people appointed, that you actually then have this power for the Lieutenant Governor in Council?

Hon Mr Conway: I have advanced the argument. This board will of course have very significant powers.

Mr R. F. Johnston: As a police commission does not.

Hon Mr Conway: The management of a multibillion-dollar fund is something that I attach a great deal of importance to.

Mr R. F. Johnston: The budget of the Metropolitan Toronto Police Commission is relatively large as well and you are telling me that you should have the right to appoint the chair?

Hon Mr Conway: Enough said.

Mr Jackson: No.

Mr R. F. Johnston: Come on.

Mr Jackson: I want to pursue this. We had a Minister of Health who intervened directly in the appointment of the administrator of a hospital because, in her opinion, that administrator was not administering in accordance with certain policies. That is when it has been used on the reverse of that coin, and I was very deeply offended by that.

Are you suggesting that if the plan somehow does not yield in accordance with some set of assumptions, and you are in some political hot water, you reserve the right to offer up for the public consumption a chair as opposed to the government, which ultimately is running this plan? I cannot understand where you are getting to use this tool, which you seem to covet so deeply.

Hon Mr Conway: I do not think I can add very much to what it is that has to be said.

The Chair: All right. May I consider this discussion complete on the amendment to subsections 121(2), (3) and (4) as presented by Mr Morin-Strom? Actually it is an amendment to an amendment. Is the discussion complete on this matter? Are you ready for the vote?

Mr Morin-Strom: On the amendment, yes.

Mr R. F. Johnston: A recorded vote.

The Chair: A recorded vote. We have Mr Conway, Mrs Stoner—

Mr Morin-Strom: Wait, wait, wait.

Mr R. F. Johnston: We could make it unanimous.

Interjection: It is okay. You can break the tie.

Mr R. F. Johnston: If not, you could appoint somebody who will.

The Chair: Okay. He is so anxious to vote, he confuses me sometimes.

Mr R. F. Johnston: If we have any more trouble out of this government Chair, we will appoint somebody else to run this committee. That would be a better approach than leaving it up to the committee.

The committee divided on Mr Morin-Strom's amendment to the amendment on subsections 121(2), (3) and (4), which was negated on the following vote:

Ayes

Jackson, Johnston, Morin-Strom.

Nays

Conway, Keyes, Elliot, Fawcett, Stoner.

Ayes 3; nays 5.

Hon Mr Conway: I was sitting here actually thinking about Simon de Jong's mother as the potential chair.

The Chair: Okay. May I consider sections 121 to 127, inclusive, as additions to the bill?

Mr Morin-Strom: No. We want a vote on section 122. Separate sections.

The Chair: You want to take section 122 separately.

Mr Morin-Strom: I want subsection 122(3) brought out and a discussion on it. We are opposed to subsection 122(3). There is no motion because it is a deletion.

The Chair: Okay. Let us do section 121. May I consider section 121, as presented, to stand as part of the bill? Carried.

Mr Morin-Strom: I want a separate vote on subsection 122(3) because that puts a six-year limit on appointments to committees.

The Chair: Are you making a motion that it be struck?

Mr Morin-Strom: If you want me to—or we could have a vote on it. I thought you did not move deletions.

The Chair: You can strike out a subsection. You can do it either way.

Mr Morin-Strom moves that subsection 122(3) be deleted.

Do you want a recorded vote on that?

Mr Morin-Strom: Sure.

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

Mr R. F. Johnston: It is ritualistic really, is it not?

The Chair: May I consider sections 123 to 127, inclusive, as presented, to stand as part of the bill? Agreed.

On section 128, I have another amendment to the amendment.

Mr Morin-Strom moves that the proposed subsections 128(2), 128(3) and 128(4) of schedule 1 to the bill, as set out in the government motion, be struck out and the following substituted therefor:

"(2) The board has the capacity and the rights, powers and privileges of a natural person.

"(3) The board may make rules for the conduct and management of its affairs."

Mr Morin-Strom: I think this would more clearly define the board's rights in legal terms rather than the government approach, which is to lay out item by item what rights the board would have. I am not a lawyer, but I understand that giving the rights of a natural person would make clearer its rights to be able to manage the pension fund.

The Chair: Are there any comments?

Hon Mr Conway: I have a question.

The Chair: Oh, a question this time. That is good. What would you like to ask? You usually have a comment. That is why I am surprised.

Hon Mr Conway: I am quite intrigued to know how it is that the member for Sault Ste Marie imagines this board as a natural person.

The Chair: He told us he really did not understand that in legal terms.

Mr Morin-Strom: Maybe we had better get a lawyer to explain it.

Hon Mr Conway: Sure. I do not favour it. One of the reasons I do not favour it is that I just cannot conceive of how it is, given what it is we are dealing with, a board, a corporate entity—

The Chair: Which legal resource would you like to call upon, either of you, to try to interpret this? We have two or three sources here for legal counsel. It does not look like any of them are too enamoured.

Hon Mr Conway: Listen, I will stand down my query. Next?

The Chair: Okay. That query has been stood down. I do not know whether we can strike it, but it has been stood down. Are there any further

comments, questions or discussions on this particular amendment to the amendment?

I guess we are ready to take the vote on this amendment to subsections 128(2), 128(3) and 128(4). We are amending the addition presented by the government. Those who are for this? Mr Morin-Strom is for it. What about Mr Jackson?

Mr Jackson: I was going to request a separation so that I could vote for item 3.

The Chair: You want a separation. Is that possible with subsections?

Mr Jackson: If the Minister of Education is unaware of what unnatural is, then I will leave it alone.

The Chair: May I ask you to go to—

Mr Morin-Strom: I will withdraw subsection 2 and we will just deal with subsection 3 then. Obviously subsection 2 is not going to be accepted.

The Chair: Okay. This must be very complicated for people who have to keep track of all this.

We are now at section 128, an amendment to subsection 3. Is there any further comment on this before we take a vote?

Mr Morin-Strom: I withdraw the whole thing.

1740

The Chair: May I consider then section 128—I am sorry; I have more amendments to section 128.

Mr Morin-Strom: Subsection 3 by itself we agree to.

The Chair: Oh, I am sorry. May I consider 128, as presented, then as part of the bill? Agreed.

I have then additions to that which we have just inserted in the bill from Mr Morin-Strom and they would be, at this moment, numbered in your package as sections 128a and 128b.

Mr Morin-Strom moves that the government motion respecting the proposed sections 119 to 130 of schedule 1 to the bill be amended by adding thereto the following sections:

“128a.(1) The board and each board member shall exercise the care, diligence and skill in the administration of the pension plan and the investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

“(2) Each board member shall use in the administration of the pension plan and the investment of the pension fund all relevant knowledge and skill that the board member

possesses or by reason of his or her profession, business or calling ought to possess.

“(3) A board member shall not knowingly permit his or her interest to conflict with his or her duties and powers and with respect to the pension plan or pension fund.

“128b. The board shall exercise power solely in the best interests of the members of the pension plan and exclusively for the purpose of providing benefits to members and defraying the reasonable expenses of administering the plan.”

Mr Morin-Strom: I think we should mandate this kind of due diligence and care in the management of the pension fund, of the board members of the pension fund. I cannot see any reason why the government would want to have this kind of requirement put on the board members if the government is sincere with respect to having this plan managed in the best possible fashion.

The Chair: Mr Conway, do you have a question this time or a comment?

Hon Mr Conway: I think the first part of this is entirely redundant. The care, diligence and skill provisions in section 128a of the amendment are, I think, a complete repetition of section 23 of the Pension Benefits Act. Therefore, I would not favour them, not because they are not a good idea but they are better placed where they are, which is section 23 of the Pension Benefits Act.

On the other matter, section 128b, again I would not favour it for a couple of reasons. I think it would certainly place a constraint on the board that would be unhelpful and impractical. It might in fact leave less protection than might be imagined for plan members, as well as others with an interest in this particular fund.

Mr Morin-Strom: In response, the problem is that the others with an interest in the fund are the government. Certainly in my view, the plan has to be managed as a trust responsibility, and that is the principle that I believe any pension board has to be working under. The funds they are managing are in trust for the plan members and have to be managed to the best of the board members' ability to achieve a good return, a fair return, at the minimum risk possible. The kinds of demands that we are making on the board here are ones that the government should be willing to stand behind, including those that are in the Pension Benefits Act.

There are numerous exclusions to the Pension Benefits Act in this bill. If this government were serious about due diligence, care and skill of the board members for this plan, it would be insisting that those same requirements that are under the

Pension Benefits Act be demanded of these board members in the carrying out of all their duties on behalf of this plan irrespective of some of the exclusions that the government has built into this legislation.

Hon Mr Conway: I would just add that the board members have very significant and serious fiduciary responsibilities. It is because of those responsibilities, the importance and weight of those, that I do not favour the latter part of this amendment because I can imagine that part of the amendment encumbering those board members in a way which might very well affect their ability to discharge and meet their fiduciary responsibilities.

The Chair: Anything further on this particular amendment?

Mr Morin-Strom: So the minister will not accept any part of this?

Hon Mr Conway: The first part, I say, is redundant because it is in section 23 of the PBA. That is where it belongs, in our view. The second, section 128b, is—

Mr Morin-Strom: So you are on the record opposed to all of it?

Hon Mr Conway: I am on the record as having said what I have said and I have advanced the reasons in support of the arguments put.

The Chair: Anything further? Then I will take the vote—

Mr Morin-Strom: Recorded vote, please.

The Chair: —on the additions of sections 128a and 128b. A recorded vote.

The committee divided on Mr Morin-Strom's motion to add sections 128a and 128b, which was negated on the following vote:

Ayes

Jackson, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft.

Ayes 2; nays 5.

The Chair: I have no further amendment until we get to an addition to section 130. So may I consider then sections 128 and 129 as part of the bill? Carried.

We have before us then the last of the additions here, and that is section 130, and we have three subsections to be amended, subsections 3, 4 and 5.

Mr Morin-Strom moves that the proposed subsections 130(3), 130(4) and 130(5) of schedule 1

to the bill as set out in the government motion be struck out and the following substituted therefor:

“(3) The board shall provide the minister and the Ontario Teachers' Federation with a copy of every actuarial valuation of the pension plan that the board files with the Pension Commission of Ontario promptly after it is filed.

“(4) The board shall provide the minister and the Ontario Teachers' Federation with a copy of every auditor's report on the pension fund within 30 days after the board receives it.”

Mr Morin-Strom, would you like to comment or speak to your motion?

Hon Mr Conway: Again I do not accept—

The Chair: I asked Mr Morin-Strom if he would like to speak to his motion, Minister.

Mr Morin-Strom: I am afraid that the government's writing of this totally takes the board out of an arm's-length relationship with the government and gives the minister a power of interference in the preparation and filing of actuarial valuations with the Pension Commission of Ontario.

The government's requirement that the board shall not file an actuarial evaluation with the pension commission until the minister advises the board in writing that he or she agrees with that valuation is totally inappropriate. We have a minister who wants to be able to veto a valuation coming from the board. I do not think that kind of interference should be tolerated in a board which is mandated to manage this plan, I think with some sense of independence from the government.

The Chair: We have a five-minute division bell now. So I think we are going to have to go. I would like to make the decision now. Will we continue with this until six o'clock? That would finish schedule 1, if we come back immediately after the vote. Then we could begin schedule 2, where I have 13 amendments. We can either recess now until seven o'clock—

Mr Morin-Strom: I would like to recess till eight o'clock. I cannot be here at seven.

Mr Elliot: I will second the motion.

The Chair: We have not had the request before, but it is fine with me. If everyone is agreeable to that, we can come back then and continue where we just left off. It is unfortunate that it is so close to the end of schedule 1, but it is.

Mr Morin-Strom: Could I make one request to the minister and his assistants here?

The Chair: Please.

Mr Morin-Strom: Can they provide us with an amortization schedule on their current projec-

tions as to the total unfunded liability of the \$4-billion liability and what the payments will be for the next 40 years in current dollars and the balance to be paid year by year for those 40 years?

The Chair: Is the answer yes or no?

Hon Mr Conway: I believe it is yes.

Mr Morin-Strom: Thank you.

The Chair: Now, what I would like to know is, do you want the room secured like we had it last night?

Hon Mr Conway: Yes.

The Chair: We are coming back at eight o'clock. Is that agreed? Agreed.

The committee recessed at 1750.

EVENING SITTING

The committee resumed at 2007 in room 151.

The Chair: May I call the meeting of the standing committee on social development to order again for clause-by-clause of Bill 66. I am sorry to be late. My father was extra long-winded tonight when I called him and I felt he needed my attention. In any case, we all had a very restful two hours, I am sure, doing nothing but just recouping.

As we go to the discussion of this amendment to subsections 130(3), (4) and (5), we seemed to be right in the middle of it when we were called to the House. I do not know how or if you want to continue what you were saying, Mr Morin-Strom, but I am sure we remember everything you were saying.

Mr Elliot, did you have something else?

Mr Elliot: We got your information on our desks since we broke.

The Chair: Do I have that? I do not seem to have that.

Mr Elliot: From a mathematical point of view, I would like the minister and/or one of his officials to explain why the figures behave the way they do.

The Chair: Excuse me for a second. Just so that everybody who is not here and reads Hansard knows what we were doing, this is the information that was requested at the end of our last meeting. Is that correct?

Hon Mr Conway: Yes. What I was going to suggest is that this really belongs to when we get into the discussion about schedule 2. Kathy and others are here to speak to it, because I can assure you I have no intention to try to explain some of this.

Mr R. F. Johnston: That 1 March 2014 could be a black, black day.

Hon Mr Conway: I would like to be able to respond to the member for Sault Ste. Marie.

The Chair: Yes. I think you will see that it fits into, if I have it right, schedule 2, subsection 2(3), somewhere in that vicinity. Let's leave it until then. We have a request from the minister to respond to Mr Morin-Strom. Are you finished, Mr Morin-Strom?

Mr Morin-Strom: I am just trying to recall the points of this amendment.

The Chair: I cut you off almost in the middle of a sentence, if I remember.

Mr Morin-Strom: It seems to me that this amendment—yes, it had to do with the rights of the minister to interfere with the actuarial valuation and the report that should go to the Pension Commission of Ontario from the board as mandated by—what is it called?—the Pension Benefits Act.

The Pension Benefits Act mandates a board controlling a pension fund to report with an official actuarial evaluation to the pension commission. This particular clause, I think, needs some changes because the minister, for some reason, has asked for the right to approve that actuarial evaluation before it goes forward. It seems to me that surely that is a case of interference with what should be a hands-off operation of an independent board.

The Chair: This is that to which you would like to respond?

Hon Mr Conway: Yes, just very briefly. Before the dinner break the member for Sault Ste Marie referred to my desire to veto the valuation. Now he suggests that there is some kind of—

Mr Morin-Strom: I did not suggest that at all.

Hon Mr Conway: Well, you did. I remember distinctly all kinds of things that the member for Scarborough West and I could imagine.

I just want to make plain what the language of subsection 134(31) states, and that is that “the board shall not file an actuarial valuation with the Pension Commission of Ontario until the minister advises the board in writing that he or she agrees that the valuation be filed.” This is simply a request that the minister agree with the filing. The reason for that, of course, is that once filed, there could very well be obligations that have to be met as a result of that filing. That is the point that has to be understood in this respect.

Mr Morin-Strom: That is exactly the point. Those obligations, which may be on the board, but may well be on the government, may well be obligations that any employer would have to meet under the Pension Benefits Act in terms of maintaining the integrity of the plan. In this case, this minister wants the right to be able to avoid having to meet those requirements.

The Chair: Would you like to respond to whether his assessment is correct?

Hon Mr Conway: It is a scrambled egg and it is very difficult to deal with.

The Chair: I thought it was Jell-O that was difficult.

Hon Mr Conway: It is a scrambled egg the way the member for Sault Ste Marie puts it. I just want to make the point again that all we seek here is that the minister, as the language suggests in subsection 4—

Mr R. F. Johnston: It is costing some money.

Hon Mr Conway: No. It is simply saying that we agree that a filing take place.

Mr R. F. Johnston: Yes. If you do not agree, can it take place anyway?

Hon Mr Conway: I suppose—no, I do not think—the hour is late.

The Chair: I know. We are at this giddy stage, which I do not really think is appropriate, honest to goodness I do not, on such important legislation.

Mr R. F. Johnston: I would agree. We think it is inappropriate that he should have this in, and that is why we want it out.

The Chair: I am talking about the giddiness, not the amendment.

Hon Mr Conway: The point I want to come back to is that once the filing takes place, there may very well be responsibilities and obligations that attach to the crown as a result of that filing, and there is no ability for the minister to do anything but accept those responsibilities. So it is not as though, once it is filed, a minister could avoid the responsibilities that attach to that filing.

Mr Morin-Strom: As my colleague mentioned, the easy solution is to stop the filing, and then he has no responsibilities in that regard.

The other point is that not only are there responsibilities in terms of perhaps payments from the crown but in fact the results could be that the minister wants a filing that shows a bigger surplus, for example, than what the board originally wanted, which could well have the result of having a big reduction in the amount of payments that the government would have to make, because this minister is keeping all rights to surpluses in this plan, with the rights and contribution holidays. An appropriately documented report to the pension commission could well give a tremendous windfall to this government.

The Chair: You have two or three comments to respond to very briefly.

Hon Mr Conway: When my friends from the New Democratic Party get into the hypothetical possibilities, I am reminded of a former Prime Minister of Canada who once said, in a similar

situation, I think in response to a New Democrat, "Well, I suppose if my grandmother had had wheels, she could have been a bus." I mean, there are a lot of things that one could imagine in a hypothetical world.

The point I want to make is simply that there is a legal requirement for the filing of an actuarial valuation. That cannot be avoided. It is not as though you—

Mr R. F. Johnston: Oh, no—

Hon Mr Conway: Well, if you want to imagine all kinds of hypothetical—

The Chair: Okay. Are we going to deal with this any further or not? I think we have had quite a bit of discussion, and some of it has been better than the other.

Mr R. F. Johnston: There has been no real explanation about why the need to have this approval should be there. No other employer would have this kind of control over the filing of this sort of thing.

The Chair: Can the minister answer that in a very straightforward way?

Hon Mr Conway: Let some of the staff. I have tried my best, and I do not think I am making very much progress.

The Chair: Do you want to place your question again, Mr. Johnston?

Mr R. F. Johnston: No, they heard it.

The Chair: Do you have the question?

Mr Dutka: Yes, the last comment about "no other employer does that." This approach would be typical of how a private sector employer would handle it. Even if they have a pension board or whatever looking at a valuation report, generally there would still be an approval by the employer before it was actually filed. It is just the way it goes, because they are on the hook. That is pretty standard.

The Chair: Is that an answer that will satisfy for the moment?

Mr R. F. Johnston: It does make me happy to know we are making this conform with a sort of employer-controlled notion of the Conrad Black version of pensions. So as long as it is consistent, I am happy with that, yes.

The Chair: Those who are for the addition of these subsections 130(3), 130(4) and 130(5) to the bill? Actually, no, I am sorry, it is an amendment to an amendment. I have to get back into the swing of things here. Those who are for this amendment to the amendment?

Mr Morin-Strom: I asked for a recorded vote.

Mr R. F. Johnston: That was before you decided it was an amendment to the amendment.

The committee divided on Mr Morin-Strom's motion respecting the proposed sections 119 to 130 of schedule 1, which was negated on the following vote:

Ayes

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Keyes, Reycraft, Stoner.

Ayes 3; nays 5.

The Chair: I have to ask you to go back in your minds. We have to carry the amended addition to the schedule of section 130 before we can declare the whole schedule carried. I forgot to take the vote on the addition of section 130. May I consider section 130, as presented, as part of this bill? Carried. Thank you, folks.

Schedule 1 agreed to.

Schedule 2:

The Chair: Now we are into the next section of the bill, which is schedule 2, the one that Mr Elliot is very anxious to get to.

Mr Morin-Strom: I have some more amendments.

The Chair: Are you going to table them now with us?

Mr R. F. Johnston: It was a longer supper hour than we thought it would be.

The Chair: If you would like to do that, will these be replacements for those you have placed?

Mr Morin-Strom: No, I do not think so. They are additions.

Mr Jackson: After a year and a half, you would think they could table amendments on time.

The Chair: Is there anyone else who has any other amendments to table? Has anybody any further amendments, since we are all going to stop now and shuffle this paper again?

I guess if we just take a second to put those into the appropriate sections, it will make it easier for us all. Does everyone have this in order now? I think I have at least the start of it.

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If I may introduce you then to schedule 2, my first amendment deals with subsection 1(4). So may I consider that which precedes that, which would be subsections 1(1), 1(2) and 1(3), carried? Carried.

May we then go to Mr Morin-Strom's motion to strike, which is able to be placed because it is a subsection.

Hon Mr Conway: The only thing I was going to suggest, and I am obviously in the committee's hands, is that, given the number of amendments that apply here, I wondered whether there would be any interest, from the committee's point of view, in having Kathy Bouey or any one of the others just briefly summarize what is intended with schedule 2; just a very quick sketch of what is here.

The Chair: You mean an overview before we begin?

Hon Mr Conway: That is correct.

The Chair: Ms Bouey, if you would like to do that and if the committee is agreeable to that—is the committee agreeable to that?

Mr R. F. Johnston: Questions?

Hon Mr Conway: Sure.

The Chair: You would like to ask questions after the presentation.

Mr R. F. Johnston: Who knows, but if there is a possibility, I would love the opportunity.

Hon Mr Conway: It just might make some of the discussion easier.

The Chair: I really hope that everyone has the goal in mind of completing this before the end of this evening.

Ms Bouey, please.

Ms Bouey: The purpose of this schedule is to set up the procedure for the calculation of the initial unfunded liability when the plan starts up as of 1 January 1990 and, based on that unfunded liability, to set out the amortization procedure so that it will be paid off. It also has authority to start payments immediately on 1 January 1990 on the basis of a preliminary estimate, so that way it probably will take several months before the data is ready for the initial estimate.

Data to 31 December 1989 is not expected to be ready until September or October 1990, and therefore it would take quite a bit of time to get the formal estimate. It probably would not be ready until some time in 1991. As a result, rather than let the liability continue to grow in that period, the intent is to start making payments right away.

First of all, the initial unfunded liability will be determined by the board. The minister and the Treasurer (Mr R. F. Nixon) must approve the estimate in writing as a transition measure. Essentially, what is happening is that the board would be expected to be comfortable that there is

enough money in the fund to pay for the benefits. The government, in turn, must be comfortable that that is being done in a way that minimizes the cost to taxpayers.

The method of amortization is a percentage-of-payroll method. It takes 40 years, according to the schedule, although there is the ability to prepay, with the appropriate adjustments for interest. The percentage-of-payroll methodology essentially has the payments grow at the same rate that the payroll is expected to grow.

Essentially, one looks at the ratio of the unfunded liability to the future payroll, obtains a percentage and then calculates the payments on that basis. It includes interest as well as principal as time goes on. As a result of how this works, the burden stays relatively constant in real terms. However, it grows in nominal terms for some years before it starts to drop.

Mr Morin-Strom: I appreciate the fact that the ministry people have provided us with the documentation on the amortization schedule, and this really is quite revealing. Would it be appropriate for me to ask questions with regard to it at this point?

The Chair: I really would like to try to do this in order, as we have been. If you have no questions on that general presentation, I do have this amendment before me that you yourself have placed. Could we deal with that?

Mr Morin-Strom: I do not think we have placed the amendment. If you want me to place it, I will.

The Chair: I have it; that you have presented to me, I should say.

Mr Morin-Strom: They are all related.

The Chair: Could we deal with this before we start into the tables, or is it too closely connected?

Mr Morin-Strom: I will move the amendment and then I will start talking about the tables.

Mr R. F. Johnston: It just strikes me that when we have an overview given to us, the rationale for the approach that has been taken, and we have a table that is the actual demonstration of how it is going to be done, then we might as well have some of the discussion at this point.

The Chair: If you want to do that and if it will facilitate us in moving through the sections, I have no difficulty.

Mr R. F. Johnston: I am sure it is going to help. It may cut out the need for amendments.

The Chair: What would you like to ask about the schedule now, Mr Morin-Strom, please?

Mr Morin-Strom: The real point here is that this government certainly has no intention of paying off the liability and, in fact, the liability is going to escalate for many years to come, a liability which, on these figures, is starting at just over \$4 billion. As we see here, this unfunded liability starting at \$4 billion is going to increase to a level of more than \$9 billion by the year 2014. So over the next 25 years, this government is going to make no progress on the liability; in fact, it will more than double the liability.

One has to seriously question what a future government is going to do and say about the irresponsible action of this government, which has neglected to address the problem of this liability and is going to allow it to escalate from \$4 billion to \$9 billion over 25 years and then expect some government 25 years from now—who knows what that may be; it certainly will not be a Liberal government—to try to address the paying off of a \$9-billion liability over the final 15 years, as is on this table.

This is, of course, totally out of line with what would ever be mandated by the Pension Benefits Act. It was harshly criticized in testimony we received—I do not know if I can refer to this—in regard to the Public Service Pension Act, the same issue. We received a submission from the head of the Canadian Institute of Actuaries who severely criticized this government for taking this methodology for paying off, or not paying off, a liability mandated out of the Pension Benefits Act.

It certainly puts the lie to this government's claim that it is going to assume responsibility for the \$4 billion, when in fact all it is doing is passing on that liability to a government some 25 years from now.

The Chair: Whose stripe you are trying to predict. Mr Conway, do you want to answer this yourself or refer it?

Hon Mr Conway: I will not observe what I would like to observe about how some years in the future people might look back on these deliberations and somehow condemn this government and this Legislature for its failing to retire this unfunded liability.

I know I am conscious, I know I heard that. I find it, quite frankly, incredible in light of all that has preceded the debate to this point, but I really will add no more to that, except to say that what the government is committing to is paying this unfunded liability. We are not front-end loading, I suppose. We have, as Ms Bouey indicated, made a commitment to appropriate a fixed

percentage of payroll towards the retirement of this obligation.

I suppose we could accept an argument that says, "Let's retire it all up front." Well, we would have either a tax increase that would be stupendous or a reallocation of existing resources so spectacular that there might not be much money left for a lot of programs that honourable members, particularly on my left, fancy as important in a priority interest.

There is no question what the government is doing here. The government is accepting its obligation, amortizing this over a long period of time and applying a fixed percentage of payroll as the means by which we will make payments. I do not know whether Kathy or anyone wants to add to that.

2030

The Chair: Mr Morin-Strom, I think you were pretty busy during that explanation. I do not know whether—

Mr Morin-Strom: I heard it, or parts of it.

The Chair: You hear one thing in one ear and one thing in the other ear and it all makes sense once it gets inside. At least, that is what it looks like. Anyway, do you want further explanation? Would you like to place the question again and have Ms Bouey respond? The minister has responded.

Mr R. F. Johnston: Are there other plans that are amortized over this 40-year period? If so, which are they, besides the most recent public service plan in Ontario?

Ms Bouey: I am not aware of any other plans in Ontario. When we were examining methodologies, we found that Quebec had used a similar methodology in a 50-year period to retire pension fund liability and Massachusetts had, for similar reasons, used a 40-year period and the same methodology.

The Chair: Any further questions, comments or discussions regarding this schedule?

Mr Morin-Strom: I would just ask the minister if his government is planning to do anything in the next few years about reducing unfunded liability.

Hon Mr Conway: Our plans as to the methods and the amounts are the ones that are set out in this schedule as amended. I admit that we are not going to pay this up front; it is going to be over a long period of time and certainly in the early years, we are perhaps not going to make the kind of progress in retiring the unfunded liability that honourable members would like to see made for the reasons given.

I am not prepared to recommend and, more important, nor is the Treasurer as the Minister of Economics for the province prepared to contemplate the two alternatives that one would really have to consider—let's not kid ourselves—either huge tax increases or massive reapportionment of the expenditure priorities of the province.

Am I happy about this situation? Of course not. I am that future that was not seriously thought about in 1975. Do I like being put in this position? Of course not. Would I like to invite back the people that constructed all of this 15 years ago? Yes, but we are as a government, and hopefully with the support of this Legislature, taking a different direction, one that is more responsible and that we hope will not see the like of this again. But I am not happy about this. How could I be? How could the taxpayers be happy about this?

Mr R. F. Johnston: I have a question for the unhappy minister, and it goes as follows. You have got this table, which is obviously the end result of your deliberations around avoiding the drastic consequences that you have just laid out to us and left us trembling.

I wonder if you could tell us a couple of the other scenarios that you must have looked at, for instance, a 20-year or 25-year amortization and tax increases, and give us various times and what they might have looked like. You must have worked those things through. I am sure you would like to share them with us so we can continue to be leaflike.

The Chair: Does the minister want to answer or does he want Ms Bouey to answer?

Hon Mr Conway: I will be happy to defer to Ms Bouey.

Ms Bouey: I do not have the tax implications. At earlier stages we examined a wide range of possibilities, in terms both of time periods ranging from 15 years to 50 years and of methodologies that ranged from the level payment methodology, which is more commonly used and the normal practice under the Pension Benefits Act, to percentage of payroll, interest only and a number of other things.

We have not reworked those numbers since the decision was made to use the 40-year percentage of payroll; however, what I can say is that the question has been raised in terms of some of the amendments here about how much it would cost in the early years if the interest amount was to be fully covered, and the cost increase in 1990-91 would be almost \$250 million.

Mr R. F. Johnston: When was the decision made to pursue this model?

Ms Bouey: I believe it was announced in the Treasurer's statement on 19 January that we would be using a long period. Certainly, in the budget paper that was issued at the time of the May 1989 budget, that was explained I believe.

Mr R. F. Johnston: Is there any documentation you had from other models that predate that?

Ms Bouey: Not with me and not on the basis of the current estimate of the deficit.

Mr R. F. Johnston: The estimate at that time was lower?

Ms Bouey: Yes, the estimate of the deficit was lower at that time. We did work out at the request of the Ontario Teachers' Federation how much it would cost on the basis of either paying the greater of interest or percentage of payroll. We have that with us as well tonight. I can provide you with that.

Mr R. F. Johnston: It would be helpful. What does the Pension Benefits Act allow in terms of scope? Does it allow anything close to this 40-year model?

Mr Macnaughton: It allows 15 years level percentage of payroll, although there are some provisions that were being discussed for providing retroactive inflation protection, which is what we are talking about funding here.

Mr R. F. Johnston: Are there any other recent examples of fairly large pension plans which have needed to be reworked and have been done on that 15-year plan through the Pension Benefits Act? As an example, OMERS or anything? Are there any other major plans which have had to go through that?

Ms Bouey: OMERS has not been in a deficit position for many, many years.

Mr R. F. Johnston: Are there private ones which have?

Ms Bouey: Frankly, we would not normally be all that familiar with what was going on with the private plans. That was supposedly our colleague Ministry of Financial Institutions.

Mr Macnaughton: The situation that we are talking about is really very unusual. Private plan sponsors are not in the habit of providing benefits without funding, and you would have to have very serious decline in investment earnings or much higher salaries than expected to get the kind of deficit we are talking about in this particular situation.

The Chair: Mr Elliot, you indicated earlier you had some interest. Do you want to ask any questions on this particular schedule?

Mr Elliot: No, I will let you know if I want to. Thanks.

The Chair: May I begin the discussion? Mr Reycraft, I am sorry.

Mr Reycraft: May I ask what rate of interest is used in the projections?

Ms Bouey: It is a streamed rate of interest down from the current earnings of the fund—perhaps Bruce will remind me—to about 11.1 per cent. It moves essentially in equal steps after the two years we essentially know. We know what 1988 was. We know mostly what 1989 is, and then it moves in equal steps down to the long-term nominal rate of eight per cent which is used in evaluation. The assumptions here are consistent with how the plan was valued and how the contribution rate was calculated.

The Chair: I will ask the committee if I may begin to work on the amendments to this schedule. Are we ready to do that? Have we had all the questions? You have another one, Mr Morin-Strom?

Mr Morin-Strom: Well, we have just received another document now based on paying at least the interest cost on the debt. Certainly any of us who have home mortgages know that the bank would not take kindly to us having a mortgage and not paying at least the amount of the interest every year on our debt.

The Chair: I think it is very hard to get somebody to do that.

Mr Morin-Strom: Yes. In this particular case the interest, as we have just heard in the testimony, is some \$250 million more than the payment in the first year, which is only \$195 million. The interest is another \$250 million on top of that. The interest I guess is some \$445 million, of which the government is paying less than half. So it is no wonder that the debt is going up.

Now, this new document that came shows what would happen if at least the government was ensuring that it did pay that full interest in the first fiscal year—I guess they are showing \$443 million plus the interest cost. In that case, sure, we have to pay more up front, but the whole payment is paid off in 2002. So the whole debt is paid off in a little more than 12 years, rather than this government passing the buck to future generations so that the debt balloons to \$9 billion and gets paid off starting at the end of a period 25 years from now.

Even Ontario Hydro's planning schedule is out for 25 years. This government is counting on

some government starting at that 25th year to actually then begin paying down the debt.

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The Chair: As I understand it, the minister has already given his reasons. I do not know whether you want to—

Hon Mr Conway: The only thing I would add to what I said is that I just sit here and I fantasize about mortgage bankers approving this mouse-trap in 1975. Of course, they would never have done so. The analogy falters, it seems to me, at the very first instance. You would never, ever have anybody in a financial institution, if you want to use that analogy, who would have let this creation off the ground. But 15 years later, it is not pretty. I agree. I am not happy.

Mr Jackson: It is not a minority government. You are the minister and you were in there swinging, as I recall.

Hon Mr Conway: As I remember, this deal was cut before—those of us who got here after 18 September had a say in it, but I just make the point, if the member for—

The Chair: I think that not going back into history is terribly helpful at this moment, or likely it is helpful not to go back into history.

Mr R. F. Johnston: Just a minute, Madam Chair. Given the one other alternative that we have looked at, we have a very quick payoff period of 12 years and I would be interested to see some partial attempt at meeting interest rate payments and being dealt with over a 25-year period and see what the effect would be, rather than this business—I mean 40 years. We are talking Tory dynasty time here; that is how long we are talking about paying this thing off, 42 years. It has got that sort of a horrible ring to it.

The Chair: It might be longer than you and I might live, Mr Johnston.

Mr R. F. Johnston: I would really like to see some of the other scenarios in terms of—

Hon Mr Conway: The Treasurer has indicated what the policy is and it is clearly set out in this legislation reinforcing the position that he took earlier in the year. I accept the fact that you would rather it was a different way. This is what the government has decided for, I think, reasons that have been advanced. It is not perfect; it is not without a certain—

The Chair: I think we have said about as much as can be said. May we begin the discussion of schedule 2?

Mr Morin-Strom, do you want to place the amendment you have given me?

Mr Morin-Strom: Absolutely.

The Chair: Mr Morin-Strom moves that subsection 1(4) of schedule 2 to the bill be struck out.

Mr Morin-Strom: This section reads as follows, “This section and sections 2, 3 and 4 prevail over any conflicting provisions of the Pension Benefits Act, 1987 or of a regulation made under that act.”

This is the operative section which allows the government to proceed totally against the law as the law is written today. The Pension Benefits Act would mandate this government to paying off this unfunded liability in a responsible and timely fashion. This whole section as well is in a section of the bill which cannot even be touched by a joint agreement.

This government asks for a joint agreement, but it is a section of the bill that a joint agreement cannot address. There is no right under those operative clauses to change schedule 2. So this is being fixed in law by this government and, at the least, the requirements of the Pension Benefits Act should be mandated. That would result in a payment schedule much more along the lines of the second one we have received where the payment is over 12 years, or I believe in that case it would be over 15 years as mandated. In the long run, it would certainly be far more fiscally responsible in terms of keeping the debt down on this plan and ensuring that the debt gets paid off.

The Chair: Mr Conway, would you like to comment?

Hon Mr Conway: I have said my piece.

The Chair: Have you said your piece, Mr Morin-Strom?

Mr Morin-Strom: Yes.

The Chair: Any further saying of the piece?

Mr R. F. Johnston: I do not understand the posture that—

The Chair: You do not understand which?

Mr R. F. Johnston: —the posture that the government is putting forward for this. I do not understand why this kind of a 40-year spreading of this is seen to be responsible governing of a plan that you have already admitted was badly founded in terms of the debt that it seems to have accumulated, and now, even by the year 2014, you have a \$9-billion debt limit in it, fixed as part of the plan. I do not understand that notion, why the present laws which govern other pension plans need to be abrogated so absolutely in order to allow this relatively unique approach to this kind of thing to be handled.

I am wondering what the other implications are; for instance, for teachers in terms of the benefits. If you have got a plan that is going to have a \$9-billion debt right to 2014, what are the chances of really improving the benefits within that plan during that period? Is the government not going to be able to cry poor all the way through this period and say, "God, we've got this debt hanging over our heads and all"?

The Chair: You seem to be asking a lot of questions. I think some of them are related.

Mr R. F. Johnston: One of them must have been.

The Chair: Mr Conway has said he has said everything he wants to say. Mr Conway, do you want to rethink that or do you want to refer it to Ms Bouey?

Mr R. F. Johnston: Too thin to be a Buddha. Let's have some response here.

Mr Jackson: Since some of these matters deal with Treasury matters, perhaps the parliamentary assistant, who is here on behalf of the Treasurer, might comment more fully. I sense clearly that the Minister of Education is putting on a strong and admirable response to this bill—

The Chair: Mr Reycraft has not asked to speak. If you want to ask questions—

Mr Jackson: —but these are Treasury matters. I am getting a sense that Education has very little to do with this.

Hon Mr Conway: In one sense, it is quite clear that the Treasurer has set clearly the policy that is being pursued here, decided by cabinet but outlined, as Ms Bouey indicated, in a number of statements by the Treasurer earlier in the year, and I support that entirely. I do not want to mislead anyone about that.

To the earlier question from Mr Johnston, "What about benefit improvements," let's remember, from at least from my point of view, why is it that we are in this rather difficult situation with this kind of unfunded liability. From my point of view, it seems to me we are in this difficulty because benefits were decided in the past that were not at all properly funded.

Mr Jackson: You can hardly say that you are properly funding them now.

Hon Mr Conway: I just want to come back to the point Mr Johnston raised, and that is that we are here today, in my view, because we want to put this plan on a more funded basis.

Yes, we had some choices as to how we would retire the unfunded liability. The Treasurer has indicated, and I support him in this, that we have

decided to amortize this over a long period of time, using the formulas that have been indicated, because, in our view, of the options available, that is a prudent course of action.

I do not countenance the kinds of program cuts or tax increases that would be required to contemplate some of the alternatives, and I have got to tell you that over the last 10 or 15 years I do not remember too many speeches in the Legislature—I can remember some, but I do not remember too many—that affected a worry about this mounting problem. I do not want to leave anybody with the impression that we are going to repeat a situation of providing benefits that are going to drive us in the very direction that we are trying to correct in this situation.

Interjection.

The Chair: Mr Conway has just repeated what he said about three or four minutes ago. I do not know whether you want anyone else to try. If you want to ask a question of anyone else on the committee, through me, you may do that.

Mr Morin-Strom: There is a concern about the fact that this debt is owed one place or the other. The government pretends as if this debt to the pension fund does not matter, I guess, and the fact that this debt goes up higher and higher does not appear on the government's books, I guess, or does not impact on whether the government is running a bigger deficit overall or not.

Hon Mr Conway: The government has accepted this liability. We are going to accept it as ours and we have indicated in this schedule how it is we intend to deal with it, over, admittedly, a long period of time. I have not heard too many other people advancing alternatives that they are prepared to relieve it.

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Mr Morin-Strom: But to the government, what is the difference between owing the debt as it is now back into the pension plan—you want that debt to go up higher and higher and increase that amount of debt—versus borrowing the funds from other sources, paying it into the pension plan and owing it to those other sources?

The Chair: Mr Conway, I think you are being asked before and after.

Hon Mr Conway: I cannot add to what has already been indicated.

The Chair: Okay. Mr Jackson?

Mr Jackson: Since the minister has got history lessons coming at us, I am trying to revisit how the government first announced why it had to get involved with this piece of legislation in the

first place. I understand it was to wrestle a sort of control of this debt. It was growing at too great a rate and they were somehow going to wrestle it to the ground.

How, on the one hand, can you justify getting into this whole mess and then, by the same token now, presenting a model which calls for a 40-year amortization and a doubling of the deficit?

The Chair: Do you want to try to be brief, Mr Conway, and respond to that?

Mr Jackson: Try to be brief. It may be difficult.

Hon Mr Conway: The member for Scarborough West (Mr R. F. Johnston) had an absolutely fabulous and eloquent predecessor named Stephen Lewis, who would respond to the first part of the last question by feasting on the word "chutzpah"—

The Chair: I asked you to be brief.

Hon Mr Conway: —and I can only think of the word "chutzpah" when I think about the first part of the last question.

I have to really suggest to the member from Burlington that he would want to take that up with a number of Treasurers in the ancien régime who must have sat around—maybe it was what drove Darcy McKeough from this place in 1978, I do not know, but I am just simply telling you that the Treasurer of Ontario has indicated, on behalf of the current government, a real and genuine concern about the fact that this plan, a good plan, is in some real difficulty, we believe, because it is not properly funded in so far as the benefits that it is providing are concerned.

We have indicated to the community that we will accept the unfunded liability from the beginning to X point in time, that into the future we want to address the problem that we felt created the difficulty in the first instance and that is why the contribution rate increase on both sides is being asked for. In accepting, on behalf of the taxpayers of Ontario, the responsibility for the unfunded liability, of whatever amount—and it is in the billions of dollars—we have, perhaps with less heroism than my friend from Burlington might imagine if he were in my place, set out a course of action and a formula that will meet that obligation of accepting the unfunded liability.

I admit that there are other ways. This is the way the government has chosen to do it and it is now before you.

The Chair: I hope you are all remembering that we are speaking to this amendment that Mr

Morin-Strom has put. I do not think every comment is directly related to it.

Mr Elliot: I would like to ask two or three questions of clarification, if I might, and they are generally related to the amendment.

The first comment or question has to do with the fact that, am I correct in assuming with respect to schedule 2 that it is straight and simply the repayment plan, or the payment plan to pay off the unfunded liability of approximately \$4-billion?

Hon Mr Conway: Do you want to deal with that, Mr Conway, or do you want to ask Ms Bouey to do it?

Hon Mr Conway: Kathy can—

Ms Bouey: Yes, that is correct.

Mr Elliot: Because of that affirmative answer, may I also assume that, because we have opted—

The Chair: Some people do express themselves succinctly. Sorry, Mr. Elliot.

Mr Elliot: It is a little bit hard to keep a line of reasoning going with interjections, particularly from the chair.

The Chair: I am very sorry, Mr Elliot.

Mr Morin-Strom: It is not a plain and simple payment of paying off the schedule; it includes getting access to surpluses.

Mr Elliot: Madam Chair, I believe I had the floor and I do not think up until now I have really commented on any of the comments made by the people from across the floor. I think this—

The Chair: Please continue.

Interjection.

Mr Elliot: Well, maybe we will not be disappointed much longer.

Interjection.

The Chair: Mr Johnston; please.

Mr Elliot: Because of the way the scenario has evolved up until this point in time, we have come up with a government-sponsored plan or agreement in this particular situation. Is schedule 2 part of that agreement?

Ms Bouey: Schedule 2 was the way the government proposed to pay the unfunded liability, regardless of the governance option chosen. I think it was made clear during the discussions on partnership and on the member-run fund that this methodology would be used.

Mr Elliot: The third and final question is: Is the Treasurer, in his wisdom, I assume, deciding to stretch it out, like you would on any mortgage repayment, over 40 years, so that the annual amounts of money being paid, from a cash flow

point of view, would be a more reasonable kind of thing than over a shorter period of time, like we all do with respect to a mortgage when we take out a mortgage?

Ms Bouey: That is essentially what he is doing if you think of constant dollars, dollars of constant purchasing power. It works a little differently from a house mortgage in that the amounts increase. It is a constantly growing amount that grows with payroll. However, over the period it does exhaust the initial unfunded liability, so it has the same effect.

Interjection.

Ms Bouey: A mortgage would normally have equal amounts every year that you would be paying.

Mr Elliot: The other helpful comment my colleague has made is that our mortgage payments here are geared to income and that income has to do with the amount of revenue coming in from the payments by teachers.

The Chair: Is that it, Mr Elliot?

Mr Elliot: That is fine.

The Chair: Mr Johnston? You did have your hand up. Please begin.

Mr R. F. Johnston: I will. It sometimes takes me a moment or two to get the gears going. I know you will bear with me.

When I look at the tables that have been put before us and I look at the dollars that are coming out on the long-term plan, what does the total ring up as in terms of the fiscal year totals? You must have worked that one out. It starts off humbly enough, one must say—\$194 million does not seem that bad—but have you added up all these figures up to when it is fully paid off in 2029 in comparison, for instance, with what the totals are in this other formula that you have shown us with the 12- or 15-year period?

Ms Bouey: For these calculations we have not, partly because as one moves on in time, the amounts, in terms of the share of the budget, the amount you see in nominal dollars, does not tend to be all that—you cannot really compare them. It is sort of like saying, “How much will a teacher be paid in 20 years and how does that relate to the current salary?” It is probably going to be hugely different from right now in terms of much, much greater, and therefore we did not think it was very meaningful to add those amounts up.

Mr R. F. Johnston: I am a little slow at these things. We were just using a mortgage in comparison here, and I would love to have that 40-year mortgage myself these days, I am sure.

Mr Jackson: Especially at eight per cent.

Mr R. F. Johnston: Yes.

But is it not a fact that the difference between these plans could be something as much as \$20 billion?

Interjections.

Mr R. F. Johnston: No? I am sorry, \$20 billion nominal dollars?

Mr Dutka: The mortgage analogy is a good one, but this is not really a—

Mr R. F. Johnston: It was accepted earlier; I thought I would play on it.

Mr Dutka: It is a nice analogy to understand what is going on, but it is really a very different situation.

I think that, as a good example, the normal cost, the contribution of both the government and the employees, is expressed as a percentage of payroll. There is a lot to be said about paying off this kind of a debt as a percentage of covered payroll, just from the fact that it is a manageable number that makes some sense, but if you had a choice as an individual, you would probably want to do this as well with a mortgage. That is the problem with the mortgage, and this is not somebody buying a mortgage on a house, but if you had your choice, you would probably prefer to pay your mortgage off as a level percentage of your pay over a period of time.

Mr R. F. Johnston: There is an argument for moving to millennia amortization, which is what we seem to have in front of us here. I am sure any other private pension plan under the present act that ran into some difficulty would love to be able to move to this option as well.

Mr Dutka: It would be difficult, though, to imagine a private pension plan running into this kind of difficulty. This is not a typical situation. A corporation would have had some difficulty just getting in this position, and I do not think it is really fair to just say, “Well, you should do what any corporation should have done,” because no corporation could have got into this situation.

The Chair: I think that was explained before.

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Mr R. F. Johnston: The minister made it sound like the plan sort of ran amok, was without control, and that the governments did not have anything to do with this. Of course, even our recent governments have had something to do with this. We might remember even in the last four years a decision that was made during the Bill 30 hearings about retirement windows and things which were done for political reasons,

which again have nothing to do with what a corporation might have to do with its workers in terms of its pension plan. But those things come up.

I wonder if you can tell me, Minister: There seems to be immutability, if I can put it that way, to this proposal you are putting forward. It cannot be touched in any kind of agreement that you may come up with with the teachers in the long run in terms of a shared plan. At least, you did not respond to Mr Morin-Strom's accusation on that.

Hon Mr Conway: That is correct, and I should have perhaps identified that earlier. The member from Sault Ste Marie is correct. This schedule can only be amended by the Legislature.

The Chair: May we consider this amendment at the present time?

Mr R. F. Johnston: The point that I was just coming to about this is—

Hon Mr Conway: Janet might want to clarify that.

Ms Skelton: Schedule 1 is the only thing that can be amended by order in council. The act, in schedule 2, must go back to the House for amendment.

The Chair: Thank you very much for that clarification.

Mr R. F. Johnston: Is that supposed to make me happy? That does not mean teachers can therefore get it back. All it means is that the government of the day can do or not decide which to do. The point I am trying to get at—

Hon Mr Conway: But it is also a given, I think, that this is a government responsibility. I do not hear anybody out there offering to have a part of this action. If I do, well then I will convey to the Treasurer of Ontario a truly joyful tiding in this Christmas season, but I have not heard anyone offer to buy a piece of this action, and if you are, Mr Johnston, then you have truly become a radical socialist.

Mr R. F. Johnston: I would like to help out, but I was really looking to move into this millenium amortization for my own semi instead.

I guess I want to find out still, and I have not been able to get an answer on this, the reality is that things do change, and from time to time things like major changes to retirement plans, like large windows for early retirement, etc, take place, that can put an extra cost on a plan. What does that do to this kind of schedule? Does that mean that to bring about any of those kinds of windows in the future you would have to come

back to the House with legislation for it, unlike what we did with Bill 30, in order to change, because that would affect, one would presume, the debt of this kind of a plan?

The Chair: Are you able to comment on that now, Mr Conway?

Hon Mr Conway: Kathy.

Ms Bouey: The methodology is being used just for the initial unfunded liability. For any subsequent deficit, the plan is bound by the normal PBA requirements. Any unfunded liability that arises in the future would have to be paid off under the usual 15-year rules. Any benefit improvement that might happen in the future, if it had a past-service cost, could lead to an unfunded liability in the future, but it would not affect the schedule.

Mr R. F. Johnston: In another 10 or 15 years, if there was a problem that way, the next government could set up a second schedule to deal with that particular debt and put it outside the Pension Benefits Act.

Ms Bouey: It is bound by the PBA. This board will have to file triennial valuations. At that time, if there is an unfunded liability, the government will have to address it as sponsor.

The Chair: Are there any further questions or comments? Would you be willing now to take the vote on this amendment to subsection 1(4) of schedule 2 then, as placed by Mr Morin-Strom? Okay, we are agreed to take the vote. Those who are for this amendment of striking out subsection 1(4) of schedule 2? It is a recorded vote, I guess.

The committee divided on Mr Morin-Strom's motion, which was negatived on the following vote:

Ayes

Jackson, Johnston, Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Stoner.

Ayes 3; nays 5.

The Chair: May I consider section 1 of schedule 2 carried?

Mr Morin-Strom: No. Recorded vote; reverse vote. Same vote.

The Chair: Reverse vote. I am not sure. Is that what reverse vote means?

Mr Morin-Strom: Same vote, if you want.

Interjection: Same vote reversed.

The Chair: Same vote reversed. Okay. That is going to be confusing for people who do not know how things work around here.

I now have before me a government amendment to schedule 2, subsection 2(3). May I consider subsections 2(1) and 2(2) carried? Carried.

We are dealing now with subsection 2(3), which is the table. A new table has been placed before you and we have had backup material to that decision as well. Is there any further discussion regarding this table that has become an amendment to subsection 2(3)?

Mr Morin-Strom: I think the minister has to read it for the record.

The Chair: Sorry; I am trying to move more quickly now. It seems we have discussed this and discussed it. Minister, please, if you would, read all of these figures. Do you need a ruler or something to make sure you get them correct?

Mr R. F. Johnston: On a point of order, Madam Chairman: I am not sure if it will work and that would be up to the clerk, but can we vote unanimously to deem something to be read into the record? We cannot.

The Chair: I think the decision has been made several times in committee that it is impossible.

Mr R. F. Johnston: Tables do not show themselves in Hansard either, often, right?

The Chair: Do tables show themselves in Hansard, Mr. Decker?

Clerk of the Committee: They would enter this in the same format as it is entered before us now. Unless it is read, it does not appear anywhere else in the record so the practice has been to read all amendments.

The Chair: Mr Conway moves that the table to subsection 2(3) of schedule 2 to the bill be struck out and the following substituted therefor:

"TABLE

"INTERIM PAYMENTS OF UNFUNDED
"LIABILITY

Item	Date of Payment	Amount of Payment
1.	1 January 1990	\$15,640,000
2.	1 February 1990	\$15,710,000
3.	1 March 1990	\$15,780,000
4.	1 April 1990	\$15,851,000
5.	1 May 1990	\$15,922,000
6.	1 June 1990	\$15,993,000
7.	1 July 1990	\$16,065,000
8.	1 August 1990	\$16,136,000
9.	1 September 1990	\$16,209,000
10.	1 October 1990	\$16,281,000
11.	1 November 1990	\$16,354,000
12.	1 December 1990	\$16,427,000
13.	1 January 1991	\$16,500,000
14.	1 February 1991	\$16,574,000

15.	1 March 1991	\$16,648,000
16.	1 April 1991	\$16,723,000
17.	1 May 1991	\$16,798,000
18.	1 June 1991	\$16,873,000
19.	1 July 1991	\$16,948,000
20.	1 August 1991	\$17,024,000
21.	1 September 1991	\$17,100,000
22.	1 October 1991	\$17,176,000
23.	1 November 1991	\$17,253,000
24.	1 December 1991	\$17,330,000
25.	1 January 1992	\$17,408,000
26.	1 February 1992	\$17,486,000
27.	1 March 1992	\$17,564,000
28.	1 April 1992	\$17,643,000
29.	1 May 1992	\$17,721,000
30.	1 June 1992	\$17,801,000
31.	1 July 1992	\$17,880,000
32.	1 August 1992	\$17,960,000
33.	1 September 1992	\$18,041,000
34.	1 October 1992	\$18,121,000
35.	1 November 1992	\$18,202,000
36.	1 December 1992	\$18,284,000."

The Chair: Is there any further discussion regarding this table and the amendment that has been placed regarding it? Are you ready for the vote on it then? I would like to ask those who are for the amendment. Mr Morin-Strom, do you have a question?

Mr Morin-Strom: I just express again our concern that this is not fiscally responsible. The minister should have changed these figures, at the minimum, to pay the interest on the debt so that the debt does not continue to escalate. What we have here, with this kind of payment schedule, is the minister wrestling the debt to the ceiling, and that debt is going to go from \$4 billion to \$9 billion over the next 25 years.

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The Chair: Those who are for the amendment as placed by Mr Conway? Those against?

Motion agreed to.

The Chair: Does section 2 of schedule 2, as amended, carry? Carried.

I have some amendments before me from Mr Jackson to section 3, but they refer to subsections 3(2) and 3(3). May I consider subsection 3(1) carried? Carried.

The Chair: Mr Johnston, or Mr Jackson?

Mr R. F. Johnston: You can call me Johnston.

The Chair: I thought I saw Mr Jackson. He seemed to be in and out. I thought he was here. Is he not here? Is he not going to place any more amendments? Is that what he has stated?

Mr R. F. Johnston: I am not saying he is sulking. I want you to know that. I am just saying he is not going to place any more amendments.

The Chair: And he has just given that message to you to give to the committee, has he, Mr Johnston?

Mr R. F. Johnston: Yes. Well, I lipread.

The Chair: You lipread.

Mr Morin-Strom: I have one to the same clause in any case.

Mr R. F. Johnston: I think you can take my word for it.

The Chair: I am going to do that. I hope you are correct. This is withdrawn in other words, or never placed, whatever way we want to take it.

We now have an amendment from the government to somewhat the same section there, clause 3(2)(b). Mr Conway, are you ready to speak to this and read it into the record?

Mr Morin-Strom: What are we doing now?

The Chair: We are dealing with a government amendment to schedule 2, clause 3(2)(b). That is what I have before me. I am sorry. I have just been given this motion. Somehow or other it did not get into my pile. I am going to have to ask the minister to wait until we deal with Mr Morin-Strom's motion, which is clause 3(2)(aa), which is an addition.

Mr Morin-Strom moves that subsection 3(2) of schedule 2 to the bill be amended by adding thereto the following clause:

"(aa) include as an asset the present value of the series of special payments referred to in subsection (3)."

Mr Morin-Strom: This is a recommendation that we heard from the teachers' federations and it is kind of technical. It has to do with the accounting statement and their desire that the debt the government is saying it is committing to eventually pay to them should actually show up as an asset to the fund because it is a call for those funds from the government and should show up on the financial statements of the pension plan.

Hon Mr Conway: This is an accounting I do not accept. I think the member knows exactly what he intends with this amendment. It is an effort, as I understand it, to have the special payments count in a way that would create the impression that there is some kind of surplus potential.

Mr Morin-Strom: I guess the concern of the members is that if this government really does intend to pay the debt, that commitment is there permanently and then that is an asset this fund

can count on to balance the fund. Is the fund going to be balanced or is it not going to be balanced? Is it going to take 40 years before you have a balanced fund, even in terms of the financial statement on it?

Ms Bouey: Essentially, this amendment would have no real effect in terms of the financial health of the plan. From a staff point of view our concern would be the precedent that this sets for the private sector because it just sort of assumes the plan to be fully funded when in fact it is not. It will be, but it is not.

The Chair: Thank you, Ms. Bouey. Are there any further comments or questions? Are you ready for the vote on this? Those who are for the addition of this clause 3(2)(aa) to the bill?

Motion negatived.

The Chair: There is a government motion to clause 3(2)(b).

Mr Conway moves that clause 3(2)(b) of schedule 2 to the bill be amended by striking out "approved in writing the initial valuation" in the third and fourth lines and inserting in lieu thereof "advised the board in writing that they agree that the initial valuation delivered to them be filed."

Hon Mr Conway: This change clarifies the role of the Treasurer and the minister in relation to the initial valuation. It is the point we were talking about earlier. They are not approving the valuation, but rather simply agreeing to its filing.

The Chair: Is anything further on this? Are we ready for the vote on this?

Motion agreed to.

The Chair: May I ask for consideration that subsections 1, 2, 3 and 4 be carried? Carried.

Mr. Morin-Strom has placed before me an amendment to subsection 3(5).

Mr Morin-Strom: At this point, those other two amendments to subsection 3(5) and subsection 4(1) dealing with this issue of showing the present value on the financial statements would not make sense unless—they came as a package and given that the first one was defeated, these two at this point would not make any sense.

The Chair: What about the one that I—oh, that is the same one. I have two copies of that somehow in my package. Does that refer to subsection 4(2) as well as subsection 4(1)?

Mr Morin-Strom: No.

The Chair: I had one for you for subsections 4(1) and 4(2). Are both of those withdrawn at the moment or just the subsection 4(2) one?

Mr Morin-Strom: No, subsection 4(2) is a separate issue.

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The Chair: Okay. May I ask then if I may consider section 3, which is now to the point of being carried to the end of subsection 4? May I consider subsections 5, 6, 7 and 8 carried? Carried.

We did make an amendment to section 3. I had that carried already; I had it carried to the end of subsection 4. May I consider all of section 3, as amended, carried? Agreed.

We are now at section 4. May I consider subsection 4(1) carried? Agreed.

Okay. We may turn to the last page of the bill. We have a motion to amend subsection 4(2). Mr Morin-Strom, please?

Mr Morin-Strom: The government has one as well.

The Chair: I do not seem to have a copy of that before me. Sorry. Okay.

Mr Conway moves that subsection 4(2) of schedule 2 to the bill be struck out.

Hon Mr Conway: This is because it is no longer being done by regs. This is part of schedule 1.

The Chair: Any comments, questions or discussions on this amendment as presented?

Mr Morin-Strom: I have an amendment to it, I guess. My amendment is to the same section. I do not know if you want it as an amendment to the amendment, or how do we do this?

The Chair: It is appropriate to place it if it is an amendment to the amendment, yes.

Mr R. F. Johnston: No.

The Chair: Because you think it is contradictory?

Mr R. F. Johnston: When it is a motion to delete, you cannot amend the deletion. Therefore—

The Chair: That is correct. You are right, Mr Johnston.

Mr R. F. Johnston: —we can take a vote on this and then we can go back and Mr Morin-Strom could suggest a new subsection 4(2).

The Chair: You are correct. Okay. Those who are for the motion placed by Mr Conway? Agreed. Thank you. It has been struck. So we likely cannot do much in the way of amending it.

Mr Morin-Strom: We can propose a new one.

The Chair: Oh, you are going to try to insert something. Okay. That is right. You got a solution to the striking out. Thank you. I am

sorry, Mr Morin-Strom; I guess we are all getting a little anxious at this moment to finish.

Mr Morin-Strom moves that there be a new subsection 4(2), which would read as follows:

“(2) An actuarial gain that may be disclosed in a valuation of the pension plan shall not be used to reduce the amount of any outstanding special payment calculated under section 3.”

Mr Morin-Strom: I think it really would be a good idea to preclude this government from stealing surpluses. The government says no one is volunteering to share this liability. I think we should put that in writing here, that in fact this government is also not going to call on anyone else to share this liability that it proclaims it is taking on.

This kind of clause might go a long way to ensuring that this government does pay off the liability, even in the very slow time frame it is planning to pay it off in. I think the government should pay it off and not be skimming surpluses, stealing the funds of the pension plan members. I guess one might even view it as taking contribution holidays with respect to the payment schedule.

Hon Mr Conway: It is amazing how many Felix Frankfurters come forward in a debate like this. I can only say that we have really settled this, as far as I am concerned, in section 114 where my honourable friend from Sault Ste Marie passionately argued the case for what it was and was not, that the government could apply an actuarial gain.

I would simply indicate that it is the government's view that it should be able to apply a gain in the fashion intended. This was the argument that we had back in section 114. We continue to disagree and, for that reason, I do not favour the amendment here any more than I did there.

The Chair: Any further comments or discussions on this amendment?

Mr Jackson: Recorded vote.

The Chair: A recorded vote has been requested.

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Yea

Jackson, Johnston, R. F., Morin-Strom.

Nays

Conway, Elliot, Fawcett, Keyes, Reycraft, Stoner.

Ayes 3; nays 6.

The Chair: May I consider subsections 4(1), (2), (3) and (4) carried? Carried.

I have another amendment placed before me to add a section 5.

Mr R. F. Johnston: Is this the one that should be entitled the Sean Conway pension plan?

The Chair: Mr Conway moves that schedule 2 to the bill be amended by adding thereto the following section:

“(5) In the initial valuation the actuary shall state the contribution rate that, in his or her opinion, is required to ensure that the present value of future contributions and the investment income derived from those contributions is at least equal to the present value of the unaccrued cost of the benefits of the pension plan plus the present value of the future expenses of the plan.

“(3) If the contribution rate stated by the actuary in the initial valuation is materially different from the contribution rate set out in the pension plan, the Lieutenant Governor in Council shall amend the plan to replace the existing contribution rate with that stated in the initial valuation.”

Mr Morin-Strom: What does “materially different” mean? A few million dollars here or there, or a few billion or what?

Hon Mr Conway: I will let one of the staff explain it.

Ms Bouey: The contribution rate, as has been said, is one per cent higher than the existing combined contribution. I guess in terms of what is materially different, that would have to be an assessment that was made by the board and by the government at the time as to what the calculated contribution rate was and whether that was significantly different than one per cent.

Mr Morin-Strom: Perhaps the minister can tell us, will he move it from one per cent to 1.5 per cent or 1.1 per cent?

Hon Mr Conway: Or 0.5 per cent. It could go up or it could go down. In light of what my honourable friends opposite have just said, they will want this. If they do not want anything else, they will want this to prevent the kind of situation they were complaining about. They wanted fiscal and financial responsibility about 10 minutes ago. This is tailor-made to address the concern that you so eloquently and so passionately identified but moments ago. It simply means to—

The Chair: Thank you, Mr Conway. I think you have made your case. Has he made the correct presumption, gentlemen?

Mr R. F. Johnston: We are not telling you till you call the vote.

The Chair: Okay. May I call the vote then?

Mr Morin-Strom: No.

The Chair: Thank you, Mr Morin-Strom.

Mr Morin-Strom: The minister, in fact, is leaving the powers to the Lieutenant Governor in Council. The cabinet is going to make the decision if it is materially different. We have no idea if this cabinet is going to decide that there should be an increase in the contribution rate or a reduction or not. It depends on what this government's judgement is going to be. Here it is totally arbitrary under your words.

Hon Mr Conway: If you remember back in schedule 1, that is exactly how you amend under this plan; it could be adjusted up or it could be adjusted down.

The Chair: Is that understood?

Mr Morin-Strom: It sounds awfully vague to me.

The Chair: Did you want to try to clarify briefly again, Minister?

Mr Morin-Strom: I think he has to change the wording to do that. It says, “materially different.”

Hon Mr Conway: I think I have said all I want to say.

The Chair: I think he has made his point as best he can.

Mr R. F. Johnston: There are limitations, are there not, on a chair?

The Chair: Yes, there are. May I take the vote now if all the discussion, comment and questioning on this particular addition is finished?

Those who are for the addition of section 5 to schedule 2? Agreed.

Schedule 2, as amended, agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

The Chair: Thank you all very much.

Mr R. F. Johnston: Allow me to raise a point of order, however, to try to deal with the matter that came up earlier on where the poor minister had to read a series of figures into Hansard, which could have been a much longer list; it could have been quite an onerous thing for us all to have withstood.

I am wondering if we cannot agree that the chair should write a letter to the standing committee on the Legislative Assembly asking that perhaps the notion of certain kinds of factual information of this sort be deemed to be read

in—not that long amendments should be, because I think it is good to have those on the record, but that at least that kind of long listing of figures, which will mean very little to people reading it, but which we all have in front of us, can be deemed. If we had agreement on that letter, it might be a useful thing for the process.

The Chair: It seems to me it could at times also make for more accuracy. It is sometimes very difficult to read that number of figures, and large figures at that, into a record correctly.

Thank you all very much. This has been a very ll very much. This has been a very good experience. I do feel that you have all co-operated very fully. I certainly want to thank the staff who were here at all hours of day and night to back up the inquiries that were made by members of this committee. Thank you very much.

Hon Mr Conway: Thank you, Madam Chair.
The committee adjourned at 2134.

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Vice-Chair: Fawcett, Joan M. (Northumberland L)

Allen, Richard (Hamilton West NDP)

Cunningham, Dianne E. (London North PC)

Elliot, R. Walter (Halton North L)

Grandmaître, Bernard C. (Ottawa East L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Keyes, Kenneth A. (Kingston and The Islands L)

Neumann, David E. (Brantford L)

Stoner, Norah (Durham West L)

Substitutions:

Conway, Hon Sean G., Minister of Education, Minister of Colleges and Universities and Minister of Skills Development (Renfrew North L) for Mr Neumann

Faubert, Frank (Scarborough-Ellesmere L) for Mr Elliot

Morin-Strom, Karl E. (Sault Ste Marie NDP) for Mr Allen

Reycraft, Douglas R. (Middlesex L) for Mr Grandmaître

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Education:

Skelton, Janet, Manager, Teachers' Pension Policy Unit

Conway, Hon Sean G., Minister of Education, Minister of Colleges and Universities and Minister of Skills Development (Renfrew North L)

Burton, John, Legal Counsel, Teachers' Pension Policy Unit

From the Ministry of Treasury and Economics:

Bouey, Kathy, Director, Intergovernmental Finance Policy Branch

Christie, Dr Robert D., Assistant Deputy Minister and Chief Economist

Tychsen, Sandra, Director, Finance Policy Branch

Macnaughton, Bruce, Assistant Director, Pension and Income Security Policy

From Peat Marwick Stevenson Kellogg:

Dutka, Randall, Partner

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